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Sept-1899





THE LAW  
OF  
PRIVATE COMPANIES  
RELATING TO  
BUSINESS CORPORATIONS  
ORGANIZED UNDER THE  
GENERAL CORPORATION LAWS  
OF THE  
STATE OF DELAWARE  
WITH  
NOTES, ANNOTATIONS AND CORPORATION FORMS

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BY  
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## PREFACE.

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The author has reason to believe that a practical annotation of the general corporation law of the state of Delaware would be of service not only to the bar, but also to business men, who are considering or resorting to the formation of corporations, as the best mode of carrying into effect everyday business requirements.

The present general corporation law herein considered, is Delaware's second general law of this nature, and was passed in conformity with the requirements of the constitution (article IX, section 1), viz.: That no corporation shall be created by special act, but only by general law.

The first law, that of 1883, while liberal in its provisions, applied to a limited class of business concerns, and prior to this law, all charters for incorporated companies were granted by special act of the legislature.

In this edition those sections of the law (Nos. 67 to 126 inclusive) relating to public or quasi-public corporations, are not treated of, it being the intention to confine the limits of this work to such corporations as may be termed "Private Companies."

As the Delaware corporation law in many of its provisions closely resembles the corporation act of New Jersey, and as there have been many decisions of the courts of that state determining the scope and powers of said act, citations of such cases have largely been made in this volume.

The object of the work is to give in concise form such general information in regard to the formation of private com-

panies, their powers, management and taxation, and also the liabilities of directors, officers and stockholders, as may not only assist the lawyer in connection with the class of corporations of which it treats, but may also point out some of the advantages of this admirable law to traders and business men.

The author is under many obligations to James B. Dill, Esq., and by his permission has made citations from his valuable work on Private Companies.

Mr. Charles Warner Smith, of the Delaware Bar, has assisted the author in the analysis and compilation of authorities.

J. ERNEST SMITH.

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| Harrington [Harr.], | . . . . . | 5 volumes. |
| Houston [Houist.],  | . . . . . | 9 volumes. |
| Marvel,             | . . . . . | 2 volumes. |
| Pennewill [Penn.],  | . . . . . | 1 volume.  |

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## SCHEDULE OF FEES AND TAXES.

### STATE TAXES AND FEES REQUIRED TO BE PAID TO THE SECRETARY OF STATE ON FILING ANY CERTIFICATE OR OTHER PAPER RELATING TO CORPORATIONS.

|  |         |
|--|---------|
| Amended certificate of incorporation (other than those authorizing increase of capital stock), .....   | \$20 00 |
| Certificate of change of principal office, .....   | 5 00    |
| Certificate of change of name, .....   | 20 00   |
| Certificate of decrease of capital stock, .....  | 20 00   |
| Certificate of increase or decrease of number of shares, .....   | 20 00   |
| Certificate of dissolution, .....  | 20 00   |
| Certificate of incorporation, for each \$1,000 of the total stock authorized (but in no case less than \$20), .....  | 15      |
| Certificate of increase of capital stock, for each \$1,000 of such increase, .....   | 15      |
| Certificate of consolidation or merger, for each \$1,000 of capital stock of the new company, over and above the total capital stock of the companies so consolidated or merged, ..... | 15      |
| (But in no case less than) .....   | 20 00   |
| Other certificates, .....  | 5 00    |
| For receiving, filing and indexing any papers required by law to be filed, .....   | 2 00    |
| For certified copies, per line, .....  | 02      |
| For official seal on certificate, .....  | 1 00    |
| For recording where required by law, per line, .....   | 01      |
| For recording original or amended certificate of incorporation to the recorder of deeds, according to length, about .....  | 4 00    |

### EXEMPTIONS.

**Religious, charitable and educational corporations** are exempt.

## ANNUAL FRANCHISE TAXES.

PAYABLE TO THE STATE TREASURER.

|  |             |
|--|-------------|
| <b>Telegraph, Telephone, Cable and Express Companies</b> , on gross amount of receipts from <i>business done in this state</i> , annually returned to, or ascertained by, the secretary of state, .....  | 1 %         |
| Companies for the distribution of <b>Electricity, Heat or Power</b> , or for the production and distribution of <b>Steam, Heat or Power</b> , or for the production, distribution or sale of <b>Gas</b> , on the gross amount of receipts from <i>business done in this state</i> , annually returned to, or ascertained by, the secretary of state, ..... | 2-5 of 1 %  |
| And upon the dividends in excess of 4 per centum so paid or declared by any such corporation, .....  | 4 %         |
| <b>Oil or Pipe Line Companies</b> , on the gross amount of its receipts from <i>business done in this state</i> , annually returned to, or ascertained by, the secretary of state, .....   | 3-5 of 1 %  |
| <b>Insurance Companies</b> (other than life), on the gross amount of premiums received by it upon the lives of persons resident or property located <i>within this state</i> , annually returned to, or ascertained by, the secretary of state, .....  | ¾ of 1 %    |
| <b>Life Insurance Companies</b> , on surplus, .....  | ¾ of 1 %    |
| And on total gross insurance premiums collected, .....   | 3-10 of 1 % |
| <b>Parlor, Palace or Sleeping Car Companies</b> , on the gross amount of its receipts for fare or tolls for transportation of passengers <i>within this state</i> , annually returned to, or ascertained by, the secretary of state, .....   | 1½ %        |
| <b>All other Companies</b> , on capital stock issued and outstanding up to and including \$3,000,000, .....  | 1-20 of 1 % |
| On amount of capital stock issued and outstanding in excess of \$3,000,000 and not exceeding \$5,000,000, .....  | 1-40 of 1 % |
| On each \$1,000,000 of capital stock issued and outstanding in excess of \$5,000,000, .....  | \$30 00     |



## EXEMPTIONS FROM TAX.

**Railroads, railways, canals, banking corporations, savings banks, cemeteries, religious, charitable or educational companies, and manufacturing or mining companies**, fifty per centum of whose capital stock issued and outstanding is invested in manufacturing and mining in this state. **Manufacturing and mining companies** not having said fifty per cent. so invested but having a part of capital stock so invested, are entitled to deduction of value of real and personal property used in manufacturing and mining in the state, from amount of capital stock issued and outstanding.

**Section 2** of the franchise tax law provides that certain corporations (above noted) shall make report of their total receipts of business done in this state, and **Section 4** requires such companies to pay to the state treasurer the amount of franchise tax fixed upon such report.

Any such company operated wholly outside of this state, is therefore not required to make a report, and would not be subject to a franchise tax.

**Section 125** defines the word "**Railroad**" to be a road, the engines, cars, carriages, and coaches on which are propelled by steam power; and the word "**Railway**" to be a road the cars, carriages, and coaches on which are propelled by electricity, by cable, motor or by any improved motive power, other than steam.



# CONSTITUTION

## OF THE

### STATE OF DELAWARE.

Adopted in Convention June 4, 1897. In effect June 10, 1897.

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#### PROVISIONS RESPECTING CORPORATIONS.

##### ARTICLE VIII.

SECTION 4. No appropriation of the public money shall be made to, nor the bonds of this state be issued or loaned to any county, municipality or corporation, nor shall the credit of the state, by the guarantee or the endorsement of the bonds or other undertakings of any county, municipality or corporation, be pledged otherwise than pursuant to an act of the general assembly, passed with the concurrence of three-fourths of all the members elected to each house.

\* \* \* \* \*

SECTION 8. No county, city, town or other municipality shall lend its credit or appropriate money to, or assume the debt of, or become a shareholder or joint owner in or with any private corporation or any person or company whatever.

##### ARTICLE IX.

SECTION 1. No corporation shall hereafter be created, amended, renewed or revived by special act, but only by or under general law, nor shall any existing corporate charter be amended, renewed or revived by special act, but only by or

under general law; but the foregoing provisions shall not apply to municipal corporations, banks or corporations for charitable, penal, reformatory, or educational purposes, sustained in whole or in part by the state. The general assembly shall, by general law, provide for the revocation or forfeiture of the charters of all corporations for the abuse, misuse, or non-user of their corporate powers, privileges or franchises. Any proceeding for such revocation or forfeiture shall be taken by the attorney-general, as may be provided by law. No general incorporation law, nor any special act of incorporation, shall be enacted without the concurrence of two-thirds of all the members elected to each house of the general assembly.

SECTION 2. No corporation in existence at the adoption of this constitution shall have its charter amended or renewed without first filing, under the corporate seal of said corporation, and duly attested, in the office of the secretary of state, an acceptance of the provisions of this constitution.

SECTION 3. No corporation shall issue stock, except for money paid, labor done or personal property, or real estate or leases thereof actually acquired by such corporation; and neither labor nor property shall be received in payment of stock at a greater price than the actual value at the time the said labor was done or property delivered, or title acquired.

SECTION 4. The rights, privileges, immunities and estates of religious societies and corporate bodies, except as herein otherwise provided, shall remain as if the constitution of this state had not been altered.

SECTION 5. No foreign corporation shall do any business in this state through or by branch offices, agents or representatives located in this state, without having an authorized agent or agents in the state upon whom legal process may be served.

SECTION 6. In all elections for directors or managers of stock corporations each shareholder shall be entitled to one vote for each share of stock he may hold.

AN ACT  
TO  
PROVIDE  
A GENERAL CORPORATION LAW  
FOR THE STATE OF  
DELAWARE.

APPROVED MARCH 10, 1899.

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**PURPOSES.**

SECTION 1. Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose under the provisions of and subject to the requirements of this act as hereinafter provided; excepting for such purposes as are excluded from the operation of a general law by section 1 of article IX, of the constitution of this state, upon making and filing a certificate of incorporation in writing in manner hereinafter mentioned.

A corporation is an artificial being and possesses such powers only as are conferred upon it by its charter, either expressly or as incidental to its existence: *Coyle v. McIntyre*, 7 *Houst.* 44.

A corporation is purely artificial, having no natural or inherent power, but only such as its charter confers. The charter of a corporation formed under general laws is the statute under which it was organized. Upon filing the certificate of incorporation it comes into existence with power to do only that which is expressly or impliedly authorized by the statute: *People v. Ballard*, 134 *N. Y.* 269.

Legislative acts are to be read, understood and interpreted according to the plain meaning and ordinary import of the language employed in them: *Neary v. P. W. & B. R. R.*, 7 *Houst.* 419.

In the case of *Steamboat Co. v. Whilldin*, 4 *Harr.* 228-230, Chief Justice Booth, in his charge, cautioned the jury against influences from extraneous remarks about "soulless corporations" or "public excitement." Corporations are collections of individuals entitled to the same protection to property in their aggregate or corporate capacity as they would have in their individual capacity. The jury have nothing to do with "public excitement," it is to have no influence on their verdict. Neither ought it to have any influence that the defendant is a "stranger" and not a citizen of this state.

The statute authorizes *persons* to form a corporation; it is implied that they shall be of full age: *Matter of Globe, etc., Assn.*, 135 *N. Y.* 280, 284, and cases cited. See also *Lindley on Companies*, p. 39. In England it has been held that the incorporation is not rendered invalid by the fact that one of the subscribers was an infant: *Nassau Phosphate Co.*, 2 *Ch. D.* 610.

The word "persons" in general corporation acts means natural persons and not corporations: *Coddington v. Exrs. of Havens*, 8 *N. J. Eq.* 590.

### FUNDAMENTAL POWERS.

SECTION 2. Every corporation created under the provisions of this act shall have power:

#### **Succession.**

1. To have succession, by its corporate name, for the time stated in its certificate of incorporation, and when no period is limited, it shall be perpetual.

#### **To Sue and be Sued.**

2. To sue and be sued, complain and defend in any court of law or equity.

#### **Common Seal.**

3. To make and use a common seal and alter the same at pleasure.

#### **May Acquire Property.**

4. To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, not exceeding in value the amount limited in its charter, and all

other real estate which shall have been bona fide mortgaged to the said corporation by way of security, or conveyed to it in satisfaction of debts previously contracted, or purchased at sales upon judgments or decree which shall have been obtained for such debts, and to mortgage any such real or personal estate with its franchises; the power to hold real and personal estate, except in the case of religious corporations, shall include the power to take the same by devise or bequest.

#### **Agents.**

5. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation.

#### **By-Laws.**

6. To make by-laws not inconsistent with the constitution or laws of the United States or of this state, fixing and altering the number of its directors for the management of its property, the regulation and government of its affairs, and for the certification and transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars.

#### **Dissolution.**

7. To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter mentioned.

### **FUNDAMENTAL POWERS.**

#### **Succession.**

1. The corporation act of 1883 limited the period of corporate existence to twenty years, unless renewed.

Companies formed under the present act may have perpetual existence. See section 7, post.

#### **To Sue and be Sued.**

2. A corporation is bound by the acts of its agent within the scope of his authority.

If an agent of a corporation acts without the scope of his authority and said acts be in any way recognized by the corporation as valid, it

amounts to a ratification and the corporation is liable thereon: *Richardson, Trustee, v. Delaware Loan Asso.*, 9 *Houst.* 354. It is not necessary on trial to prove the incorporation and existence of such corporation, in an action by or against a corporation, unless an affidavit shall be filed denying the existence of the corporation as alleged: *Del. Code*, p. 791. See also Section 63, post.

It is a perfectly well-settled principle both in this country and in England, that civil corporations, whether public or private, are subject to the general law of the land, and amenable to the judicial tribunals for the proper exercise of their powers: *State v. Wilmington City Council*, 3 *Harr.* 294-299.

The power to sue and be sued implies also the power to compromise suits: *Ellerman v. Chicago Junc. Ry., etc., Co.*, 49 *N. J. Eq.* 217.

Individual stockholders are not the proper parties to sue or defend on behalf of corporate interests without the consent of a legal majority of the stockholders: *Silk Mfg. Co. v. Campbell*, 27 *N. J. Law*, 539.

But a stockholder may sue in equity in his own name to enforce a right of the corporation, without first requesting the directors to sue, when it is made to appear that if such request had been made it would have been refused, or, if granted, that the litigation following would necessarily be subject to the control of persons opposed to its success: *Knoop v. Bohmrich*, 49 *N. J. Eq.* 82; *Ackerman v. Halsey*, 37 *N. J. Eq.* 356; *s. c.*, 38 *N. J. Eq.* 501.

A corporation may sue for a libel against it in its business, but special damages must always be shown: *Trenton Mut. Life Ins. Co. v. Perrine*, 23 *N. J. Law*, 402.

A corporation may be sued for a tort in which the element of evil intent is involved. It may be sued for malicious prosecution, for libel and for assault and battery: *State v. Passaic, etc., Soc.*, 54 *N. J. Law*, 260, 265; *Vance v. Ry. Co.*, 32 *N. J. Law*, 334; *McDermott v. Evening Journal Assn.*, 43 *N. J. Law*, 488; 44 *N. J. Law*, 430; *Brokaw v. Ry. Co.*, 32 *N. J. Law*, 328.

A corporation is liable for the torts of its agents and is liable for the acts of its agents done by its authority, express or implied: *State v. Ry. Co.*, 23 *N. J. Law*, 360; *Brokaw v. Ry. Co.*, 32 *N. J. Law*, 328.

A corporation cannot defend itself in an action for a tort done by it on the ground that the business in the prosecution of which the tort was done was ultra vires: *N. Y., L. E. & W. R. R. Co. v. Haring*, 47 *N. J. Law*, 137.

A corporation may be sued on an implied contract: *Worrell v. 1st Pres. Church*, 23 *N. J. Eq.* 96, and cases cited.

### **Common Seal.**

3. The general rule is that a corporation need use its seal only in cases where it would be essential for an individual to use a seal. The old common-law idea that a corporation can act only under its corporate seal no longer prevails: *Crawford v. Longstreet*, 43 *N. J. Law*, 325; see



also *Bap. Church v. Mulford*, 8 N. J. Law, 182; *Mendham v. Losey*, 2 N. J. Law, 327.

In *Deringer's Admr. v. Deringer's Admr.*, 5 Houst. 416, Wales, J.: "It was laid down by Blackstone and the notion prevailed for some time that a corporation could not make a parol contract, and could speak and act only by its common seal; but this technical rule of the common law soon gave way and vanished, and to-day a seal is no more necessary to render valid the acts and contracts of a corporation than of an individual, and in all cases where a natural person would be bound without a seal, a corporation would also be bound."

For the transaction of any business of an incorporated company which requires no seal, the company may appoint an agent without the use of its corporate seal or even of any writing: *Bancroft v. Wil. Conf. Academy*, 5 Houst. 577.

If the president of an incorporated company which has no seal executes articles of agreement as president of it, under his hand and a common scroll for a seal, it will neither be his own individual covenant, nor the covenant of the company; but *it seems* the plaintiff could recover under another form of action: *McCaulley v. Jenney*, 5 Houst. 32.

No words of "in testimonium," nor any words referring to the seal at all, are necessary to the validity of an instrument under seal of a corporation. When the common seal of a corporation appears to be affixed to an instrument, and the signature of a proper officer is proved or admitted, this is *prima facie* evidence that the seal was affixed with proper authority, and although it may be controverted, the burden of proof rests on the party objecting to it: *Conine v. J. & B. R. R. Co.*, 3 Houst. 288.

The appearance of a corporate seal to an instrument is presumptive evidence that it was affixed by proper authority. The presumption may be rebutted, but the burden is on the party objecting: *Manhattan Mfg. Co. v. N. J. Stock Yard Co.*, 8 C. E. Green, 162; *Parker v. Washoe Mfg. Co.*, 49 N. J. L. 465.

It is not necessary to use wax or wafer. An impression of the seal on the paper is sufficient.

Primarily the corporate character of the seal must be proved.

It requires evidence to substantiate its character: *Manhattan Co. v. N. J. Stock Yard Co.*, 23 N. J. Eq. 162; *Leggett v. N. J. Mfg. Co.*, 1 N. J. Eq. 541; *Vaughn v. Hankinson's Admr.*, 35 N. J. Law, 79; *Den v. Vreelandt*, 7 N. J. Law, 352.

No presumption of authority arises from the use of a common paper seal not on its face appearing to be the corporate seal, although accompanied by the recitation "witness the corporate seal:" *Raub v. Blairstown Creamery Assn.*, 56 N. J. Law, 264. There are two essential elements in the proof of a corporate deed—that the seal is the seal of the company; that it was affixed by authority: *Osborne v. Tunis*, 25 N. J. Law, 635. For further cases relative to corporate seal and its proof see *Parker v. Washoe Mfg. Co.*, 49 N. J. Law, 465; *Whitehead v. Hamilton Rubber Co.*, 52 N. J. Eq. 78.

**May Acquire Property.**

4. It would, in many cases, be well to insert in the certificate of incorporation as one of the general powers, the power to buy and sell and deal in real estate, as otherwise it might be difficult to show that any particular piece of real estate is required for the purposes of the corporation.

It seems that only the state can question the power of a corporation to hold real estate on the ground that its property already exceeds the amount limited by its certificate of incorporation: *State v. Mansfield*, 23 N. J. Law, 510; *De Camp v. Dobbins*, 2 Stew. Eq. 36; *American Dock Co. v. Trustees of Public Schools*, 12 Stew. Eq. 409; except perhaps a devise of lands to a corporation, where the court allowed the question to be raised by an heir-at-law in a suit in chancery: *De Camp v. Dobbins*, 29 N. J. Eq. 36; s. c., 31 N. J. Eq. 671.

Grants to a private corporation are strictly construed: *Penna. R. R. Co. v. National Railway Co.*, 8 C. E. Green, 441; *Easton & Amboy R. R. Co. v. Inhabitants of Greenwich*, 10 C. E. Green, 565.

A corporation may hold title to lands in fee simple, even though the period of the corporation's existence is limited: *State v. Brown*, 27 N. J. Law, 13; *State v. Height*, 35 N. J. Law, 178; s. c., 36 N. J. Law, 471.

As to power to grant easements see *State v. Elizabeth*, 39 Atl. Rep. 183.

**Agents.**

5. The corporation may appoint agents and factors as may be deemed necessary for such terms as may be prescribed by the by-laws, or determined by the board of directors. See section 22, post.

Appointment of agent need not necessarily be under seal: *Bancroft v. Wil. Conf. Academy*, 5 Houst. 577. See Sections 21 and 22, post, and notes.

The acts of an agent in the general course of his employment are evidence against the principal, without proof that they were done by his orders: *Waples v. Waples*, 1 Harr, 474.

A corporation being a creation of the law and an artificial person, can only act by agents, and all its instrumentalities are agents from its highest to its lowest officers and servants. A special agent is one who is authorized to do some special thing, whilst a general agent is one who is authorized to transact all his principal's business, or all of his principal's business of some particular class or kind. If a special agent exceeds his authority his principal is not bound; but if a general agent exceeds his authority his principal is bound, provided the agent acted within the ordinary and usual scope of the business he was authorized to transact, and the party dealing with the agent did not know that he exceeded his authority. If a person is held out to others, or to the public at large

by his principal as having a general authority to act for him in a particular business or employment, he cannot limit his authority by private or secret instructions. In such case, good faith requires that the principal should be bound by the acts of his agent done within the ordinary and usual scope of the employment in which he is engaged as such agent: *Lattomus v. F. M. F. I. Co.*, 3 *Houst.* 404.

### **By-Laws.**

6. As to the power of making and altering by-laws see section 26, post.

By-laws must be reasonable as well as legal: 1 *Gr.* 196; *Dayton v. Quigley*, 2 *Stew. Eq.* 77.

By-laws are binding upon and confer rights upon members of the corporation and not upon third persons without notice: *State v. Overton*, 24 *N. J. Law*, 440.

Where a by-law is adopted as a part of the original organization of the company, and the subscriptions of stock are made and money paid thereon upon the strength of it, it becomes a fundamental contract between the stockholders, and cannot afterwards be altered, even though a general power be reserved in the by-laws to make alterations therein. Rights under such a by-law are vested in the stockholders and pass to each new holder of stock by transfer: *Lowenthal v. Rubber Reclaiming Co.*, 52 *N. J. Eq.* 440.

### **Dissolution.**

7. The method of dissolution is fully provided for in sections 34, 35, 36, 37, 38 and 39. Article IX, section 1, of the constitution provides that the general assembly shall by general law provide for the revocation or forfeiture of the charters of all corporations for the abuse, misuse or non-user of their corporate powers, privileges or franchises, and that any proceeding for such revocation or forfeiture shall be taken by the attorney-general as may be provided by law.

No such general law has yet been enacted by the general assembly except section 62 of this act, which only provides for a forfeiture of a charter for failure to commence business within two years after its organization; and except also sections 10, 11 and 12 of "An act to raise a revenue for the state by taxing certain corporations," which provide that a charter shall be void upon the failure of a corporation to pay state taxes.

A failure to elect officers does not work a dissolution of the corporation. See section 22, post.

A corporation is not dissolved by a transfer of all its property and stock: *Zinc Co. v. Franklinite Co.*, 13 N. J. Eq. 323.

A corporation may be dissolved under this act by the following methods:

1. By limitation, if specified in its certificate of incorporation: section 7.
2. By surrender of corporate franchise before beginning business: section 40.
3. By voluntary dissolution by the directors and stockholders, or by the unanimous consent of the stockholders: section 34.
4. By forfeiture for failure to pay taxes: section 10 of the "Act to raise Revenue."
5. By forfeiture or failure to commence business: section 62.

#### **ADDITIONAL POWERS.**

SECTION 3. In addition to the powers enumerated in the second section of this act, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this act, and the powers expressly given in its charter or in its certificate under which it was incorporated, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, so far as the same are appropriate to and not inconsistent with such charter or act under which such corporation was formed; and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given.

By the general incorporation act of 1883, 17 Del. Laws. 147, three or more persons might become incorporated for the purpose of "carrying on any manufacturing business, for the business of preserving animal and vegetable food, for draining low lands, for building and loan associations [for homestead companies, 19 Del. Laws. 701], or for religious, charitable and literary purposes."

It has long been apparent that a general incorporation act should be passed by the general assembly more extensive in its scope and power, so as to include corporations other than those enumerated above.

To meet this demand, and to comply more nearly with the modern legislation respecting corporations, the Constitutional Convention of 1897 deprived the legislature of its power to grant special charters (except municipal, banking, charitable, penal, reformatory or educational corporations), and required that all corporations should be created, amended, renewed or revived only by or under general law. (Constitution, article IX, section 1.)

And in accordance with this provision of the constitution the general assembly of 1899 passed the act under present consideration. This act would seem to apply not only to corporations formed under it, but to pre-existing corporations whether created by the legislature or under the general act of 1883.

At common law a corporation created by charter could do any act that an individual could do, whether expressly empowered by its charter to do such act or not. For an abuse of its powers it was amenable to the sovereign alone: *Riche v. Ashbury Co.*, L. R. 9 Exch. 224, 262.

A corporation created by statute, however, is precisely what the organic act makes it. For every function it claims to exercise and for every power it assumes to possess it must find authority in legislative grant: *Watson v. Acquackanonck Water Co.*, 36 N. J. Law, 195.

There are two sources from which the express powers of a corporation created under this act are derived, viz.:

(1) **THE ACT ITSELF.** This act enumerates the cardinal and fundamental powers of all corporations and the necessities of corporate existence, without regard to the particular purposes of a corporation, such as the power of succession, of suing and being sued, etc. (Section 2.)

It also grants specific powers provided they are properly named and set out in the certificate of incorporation, instances of such being the power to consolidate or merge and to own and vote the stock of other corporations.

(2) **THE CERTIFICATE OF INCORPORATION.** It is well settled that a certificate of incorporation obtained under a general act becomes the charter of the company and taken in connection with the act itself, is the equivalent of the former special act of the legislature: *Ellerman v. Chicago, etc., Co.*

49 N. J. Eq. 217, 240-241; *Oregon R. R. Co. v. Oregonian R. R. Co.*, 130 U. S. 1. In view of this fact and of Section 8, post, empowering a corporation to embody in the certificate, provisions "*creating and defining* the powers of the corporation," there seems to be a delegation of the law-making power of the state to the incorporators.

In speaking of a provision of the New Jersey act, similar to Section 8, Mr. Dill says: "This is perhaps an innovation in general enabling acts, and if the word 'create' is to be given its usual and ordinary meaning it is as though the legislature has endowed the incorporators with the law-making power, enabling them to give the corporation such powers as they see fit, provided only that such powers are not inconsistent with the act itself. In other words, unless a power is expressly or impliedly forbidden by the statute it may be *created* under this Section:" Dill's Corporation Act of New Jersey.

### IMPLIED POWERS.

"No corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given." (Section 3.)

"Power necessary to a corporation does not mean simply power which is indispensable . . . a power which is obviously appropriate and convenient to carry into effect the franchise granted has always been deemed a necessary one. . . . In short, the term comprises a grant of the right to use all the means suitable and proper to accomplish the end which the legislature had in view at the time of the enactment of the charter:" *State R. R. Co. v. Hancock*, 35 N. J. Law, 537. See also *McCulloch v. Maryland*, 4 Wheat. 316, 414; *Olmstead v. Morris Aqueduct*, 47 N. J. Law, 311; *Crawford v. Longstreet*, 43 N. J. Law, 325; *Morris Canal Co. v. Love*, 37 N. J. Law, 60.

"The general corporation act confers on the company certain powers, the certificate contemplates others, and incidental powers follow, not only with respect of the general but also of the special powers:" *Ellerman v. Chicago Junction Ry., etc., Co.*, 49 N. J. Eq. 217, 241.

As an example of implied power a corporation is impliedly authorized to borrow money and has the incidental power to give security for its repayment, and to make negotiable notes, and to endorse notes loaned to it for its accommodation: *Lucas v. Pitney*, 27 N. J. Law, 221; *Fifth Ward Sav. Bank v. First Nat. Bank*, 48 N. J. Law, 513; *Blake v. Domestic Mfg. Co.*, 38 Atl. Rep. 241.

A corporation has no power to become a party to bills or notes for

the accommodation of others. When, however, a corporation has power, under any circumstances, to issue negotiable paper, a bona fide holder has the right to presume that it was issued under the circumstances which give the requisite authority, and such paper is no more liable to be impeached for any infirmity in the hands of such a holder than any other commercial paper: *Ib.*

What a corporation may or may not do within its grant of powers is to be determined by the reasonable intendments of its charter as well as its clear expressions of authority: *Brooklyn Heights R. R. Co. v. City of Brooklyn*, 152 N. Y. 244.

An act which is lawful in itself and not otherwise prohibited, and which is done for the purpose of serving corporate ends, and is reasonably tributary to the promotion of those ends in a substantial, and not in a remote and fanciful sense, may fairly be considered within the corporate powers: *Steinway v. Steinway & Sons*, 17 Misc. 43.

A corporation, in order to attain its legitimate objects, may deal precisely as an individual may, who seeks to accomplish the same ends: *Barry v. Merchants' Exchange Co.*, 1 Sandf. Chan. 289; *Safford v. Wycoff*, 4 Hill, 422.

The directors have power to make any contract which may be necessary, fit or proper to enable the corporation to accomplish the purposes of its creation. The question of the expediency of any contract which is within the power of the corporation, is committed to the managers: *Park v. Grant Locomotive Works*, 13 Stew. Eq. 114.

Unless restrained by law, every corporation has the incidental power to make any contract necessary to advance the objects for which it was created: *Legrand v. Manhattan Mer. Assn.*, 80 N. Y. 638.

A manufacturing corporation has no power to endorse accommodation notes: *Nat. Park Bank v. G. A. M. W. & S.*, 116 N. Y. 281.

### POWERS DENIED.

SECTION 4. No corporation created under the provisions of this act shall, by any implication or construction, be deemed to possess the power of discounting bills, notes or other evidences of debt, of receiving deposits of money, of buying gold and silver bullion, or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money.

This section is practically the same as Section 3 of the general incorporation law of 1883.

This is the only restriction in the act upon banking powers.

Under article IX, section 1, of the constitution, the right to charter banks still remains in the legislature.

The above (section 4) is similar to section 3 of the New Jersey corporation act, anent which Mr. Dill says: "This section affects in no way the power of a corporation to issue and receive negotiable paper in the usual course of business, or for any purposes incidental to the legitimate business for which the company was formed:" Dill's Gen. Corp. Act of N. J., p. 12.

A manufacturing corporation has implied power to make negotiable paper, but no power to become a party to accommodation paper; but such paper cannot be impeached in the hands of a bona fide holder for value who acquired it before maturity: *Bank v. Young, Receiver*, 5 Cent. Rep. 113.

SECTION 5. This act may be amended or repealed, at the pleasure of the legislature, but such amendment or repeal shall not take away or impair any remedy against any corporation created under this act, or its officers for any liability which shall have been previously incurred; this act and all amendments thereof shall be a part of the charter of every such corporation except so far as the same are inapplicable and inappropriate to the objects of such corporation.

It is no longer an open question, but well settled, that the legislature can bind the state by contract with a corporation chartered by it, not to tax for a given time, the franchises, or property of such corporation further than is agreed on in the charter. Such a charter is a contract between the state and the corporators, which is protected by the Constitution of the United States, and is inviolable; and an agreement to limit, or restrain the power of the state to impose further taxes on the franchises of a corporation during the continuance of its charter, may enter into such a contract and have binding force.

Such a contract for exemption from taxation, however, will not be implied; though it will be enforced when clearly expressed.

The property of banking corporations is, the franchise, or right to do banking business within the limits of their charter; their capital invested in such business, their surplus earnings set apart undivided, and such other property real and personal, as they may be authorized to have, all of which is liable to taxation like the property of individuals, unless it is otherwise agreed upon in their charter.

The bonus to the state is the price paid for the franchise, or power to do banking business: *State of Delaware v. President, Directors and Company of the Bank of Smyrna*, 2 Houst. 99.

The charter of a railroad company is a contract between the state and the company within the prohibitory clause of the Constitution of the



United States which declares that no state shall pass any law impairing the obligation of contracts. And an act of the legislature having the effect to abridge or restrict any power or privilege vested by the charter which is material to the beneficial exercise of the franchise granted, without the reservation of the right to pass such act, and passed without the consent of the company impairs the obligation of the contract, and is invalid.

The police power of the state comprehends all those general laws of internal regulation which are necessary to secure the peace, good order, health and comfort of society, but the proper limit in its bearing upon chartered rights and privileges of private corporations for public uses, would seem to be this: that the legislature may at all times regulate the exercise of the corporate franchise, by general laws passed in good faith for the legitimate ends contemplated by the state police power, that is, for the peace, good order, health, comfort and welfare of society, but it cannot, under the color of such laws, destroy or impair the franchise itself, nor any of those rights or powers which are essential to the beneficial exercise of it: *P. W. & B. R. Co. v. Bowers*, 4 *Houst.* 506, 507.

An act of incorporation either for public or private purposes is, both in form and substance a contract, within the constitutional provision that no state shall impair the obligation of a contract: *Baily v. P. W. & B. R. Co.*, 4 *Harr.* 389-399.

Rights legally vested in a corporation cannot be controlled or destroyed by any subsequent statute, unless a power for that purpose be reserved in the act of incorporation: *Ib.*, 401.

A private incorporation is a contract between the state and the corporators; and therefore the legislature cannot compel persons to become an incorporated body; or against their consent, impair, alter or repeal the rights and privileges conferred by the charter: *Rice v. Foster*, 4 *Harr.* 491, 492.

When property or rights have been acquired or become vested, no amendment or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted: *Albany R. R. Co. v. Brownell*, 24 *N. Y.* 345; *People v. O'Brien*, 111 *N. Y.* 1; *Ib.*, 11 *N. Y.* 52.

SECTION 6. Any corporation created under this act may conduct business in this state, other states, the District of Columbia, the territories and colonies of the United States and foreign countries, and have one or more offices out of this state, and may hold, purchase, mortgage and convey real and personal property out of this state; provided, such powers are included within the objects set forth in its certificate of incorporation.

This is the statutory provision authorizing a corporation chartered in this state to transact business and hold real estate outside of the state; therefore where this power is desired, it is necessary to insert it specifically in the certificate.

Any corporation acquiring property in other states or foreign countries should also consult the statutes of the state or country in which the property is located.

Every power which a corporation exercises in another state depends for its validity upon the laws of the sovereignty in which it is exercised, and a corporation can make no valid contract without the sanction, express or implied, of such sovereignty: *Runyan v. Lessee of Coster*, 14 Peters (U. S.), 129; *Briscoe v. Southern Kansas Ry. Co.*, 40 Fed. Rep. 280.

### THE CERTIFICATE.

SECTION 7. The certificate of incorporation shall set forth:

#### **Corporate Name.**

1. The name of the corporation, which shall be such as to distinguish it from any other corporation engaged in the same business, or promoting or carrying on the same objects or purposes in this state.

#### **Principal Office.**

2. The name of the city or town, county or place within the county in which its principal office or place of business is to be located, in this state.

#### **Nature of Business.**

3. The nature of the business, or objects or purposes proposed to be transacted, promoted or carried on.

#### **Capital Stock.**

4. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares in which the same is divided and the par value of each share; the amount of capital stock with which it will commence business which shall not be less than one thousand dollars; and if there be more than one class of stock created by the certificate of incorporation, a description of the different classes with the terms on which the respective

classes of stock are created. Provided, however, that the provisions of this paragraph shall not apply to religious or literary corporations, unless it is desired to have a capital stock; in case any religious or literary corporation desires to have no capital stock it shall be so stated, and the conditions of membership shall be also stated.

**Names and Residences of Incorporators.**

5. The names and places of residence of each of the original subscribers to the capital stock, or if there be no stock, of the original corporators.

**Perpetual Existence.**

6. Whether or not the corporation is to have perpetual existence, if not the time when its existence is to commence and the time when its existence is to cease.

**Officers.**

7. By what officers or persons the affairs of the corporation are to be conducted and the time and place at which they are to be elected.

**Value of Real and Personal Estate.**

8. The value of real and personal estate of which the corporation may become seized and possessed.

**Indebtedness.**

9. The highest amount of indebtedness or liability, which the corporation may at any time incur.

**Personal Liability of Stockholders.**

10. Whether the private property of the stockholders, not subject by the provisions of the law under which it is organized, shall be subject to the payment of corporate debts, and if so, to what extent.

**Corporate Name.**

1. Where two corporations created by different states exist under the same name, one maintaining a steamboat line as a common carrier and renting and occupying land owned by the other, the latter is not liable as a common carrier for property delivered to the former, unless it per-

mitted some other company to use its corporate name, and held itself out to the general public as transacting said business: *Reed v. Wilmington Steamboat Co.*, 1 Marvel, Del. 193.

A contract is not void because the corporation with which it is made is misnamed therein: *Hoboken Bldg. Assn. v. Martin*, 13 N. J. Eq. 427; *Woolwich v. Forrest*, 2 N. J. Law, 107; *Middletown v. McCormick*, 3 N. J. Law, 92. See also (as to grants) *Inhabitants, etc., Alloway's Creek v. String*, 10 N. J. Law, 323; *Den v. Hay*, 21 N. J. Law, 174, and (as to bequests), *Van Wagenen v. Baldwin*, 7 N. J. Eq. 211; *McBride v. Elmer*, 6 N. J. Eq. 107; *Goodell v. Union Assn.*, 29 N. J. Eq. 32; *Lanning v. Sisters of St. Francis*, 35 N. J. Eq. 392.

It was held in *Alexander v. Berney*, 28 N. J. Eq. 90, that "a corporation may assume a name by usage." (For a somewhat similar case see *Den v. Holmes*, 3 N. J. Law, 600.)

The right to the exclusive use of a name will be protected upon the same principle that persons are protected in the use of trade-marks: *State v. McGrath*, 5 S. W. Rep. 29.

The secretary of state must decide in the first instance whether the proposed name is, or is not within the statutory prohibition: *Ib.*

A corporation cannot acquire the name of one of its incorporators and make use of it to deceive the public, on the ground that such is the true name of one of its incorporators, or to defraud others who have built up a business under the same name: *De Long v. De Long Hook & Eye Co.*, 89 Hun, 399.

### **Principal Office.**

2. All corporations created under this act must have a principal office in this state, the place of such office must be designated in the certificate. See section 136, post.

The location of such office or place of business may be changed by supplemental certificate. See sections 135-138, post.

### **Nature of Business.**

3. Companies may be formed under this act for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose, with the following exceptions: Municipal corporations, banks or corporations for charitable, penal, reformatory, or educational purposes.

Mr. Dill treats of this subject in his admirable work on the New Jersey corporation law, as follows:

"This being the important part of the certificate of incorporation, great care should be taken that the objects and purposes of the company are stated in the fullest and clearest manner possible, because the company cannot undertake any business not authorized by its charter, and not even

the fullest sanction given by the shareholders will make valid an act which is outside the powers of the company. Directors undertaking any such business may become personally liable for loss, and great inconvenience follows from companies having too limited powers. It is often questioned how far it is necessary to detail in extenso in the certificate of incorporation the powers of the company. The answer is plain.

"The balance of disadvantage decidedly attaches to too narrowly defined objects.

"It is easier to compress, so to speak, the business of a company within the limits of large objects and broad powers than to develop business by extension in the face of narrowly defined objects. It is better to give latitude to the objects and powers as contained in the certificate of incorporation, and to limit the powers of directors by the by-laws, than to run the risk of subsequent insertion in the by-laws or in the minutes of the board of directors of a provision intended to meet some pressing requirements of the business, which provision may be found absolutely worthless, because of variations from the terms of the certificate of incorporation.

"It is customary to insert some general words, such as 'in general to carry on any other business whether manufacturing or otherwise.' But it must be understood that the courts will limit such words to cover only operations of a nature similar to the business previously mentioned, and will not include any wholly fresh business.

"It is often sought to broaden the powers by inserting such words as, 'to do any other business which the company from time to time determine.' But it is doubtful whether this adds anything to the powers of the company.

The words would probably be construed by the courts to be of no effect, as not being a statement of what the objects or purposes of the company are."

### **Capital Stock.**

4. There is no limit to the amount of capital stock which a corporation formed under this act may have.

It should be noted that \$1,000 is the smallest amount of capital stock that must be subscribed before commencing business, which need not necessarily be paid in. (See sections 13-16, 29, post.)

Where there is more than one kind of stock the certificate of incorporation should contain the designation and description of each class and state the terms on which each class is to be issued. Preferred stocks may, if desired, be made subject to redemption at not less than par at a fixed time and price (section 137). Dividends on preferred stock may be fixed at any rate not exceeding eight per cent. Special voting powers may be given to the holders of any class of stock.

For a description of some of the kinds of preferred stock which may be created see notes to section 137, post.

#### **Names and Residences of Incorporators.**

5. There must be at least three incorporators, who must be natural persons, who need not necessarily be residents of the state of Delaware.

It is the better practice to have all the original subscribers sign the certificate, as well as the original corporators.

The certificate of incorporation should contain definite statement that the parties signing the same "are all of the original corporators" as well as the statement that "they are all of the original subscribers."

In New Jersey it has been held that a general law authorizing any number of persons, not less than seven, to form a corporation to construct a railroad, does not exclude non-residents as corporators: *Central R. R. Co. v. Penn. R. R. Co.*, 4 Stew. Eq. 475.

#### **Perpetual Existence.**

6. Under the law of 1883 the period of corporate existence could not exceed twenty years, but by virtue of this act perpetual existence can now be secured by a statement to that effect in the certificate. If, however, a corporation elects to limit its existence, section 129, post, provides a method for renewing and continuing its existence.

On the dissolution of a corporation, its real estate reverts to the grantor, its personal estate vests in the people; and the debts due to it are extinguished.

The legislature cannot revive these debts by renewing the charter after the corporation has been dissolved by its expiration: *Com. Bank v. Lockwood's Admr.*, 2 Harr. 8.

#### **Officers.**

7. The business of every corporation organized under this act shall be managed by a board of not less than three directors. (See section 20.)

The directors of a corporation, acting within the defined scope of their authority, are, virtually, the hand of the company doing its business, and they have the power to settle and dispose of the claims of the company: *Del. City S. & P. S. N. Co. v. Reybold*, 8 Houst. 203.

As to time and place of election of directors see section 20, post.

**Value of Real and Personal Estate.**

8. The general incorporation law of 1883 had the same provision as this act in this particular, and the established practice thereunder was to name specifically the value of the real and personal estate of which a corporation under said act might become seized and possessed.

There is another section of this act which would seem to indicate that a definite amount is here intended to be fixed, viz.: section 2, subd. IV, which authorizes a corporation to hold, purchase and convey real and personal estate *not exceeding in value the amount limited in its charter*.

As there is no limit to the amount that can be *named*, it would therefore seem advisable to state in the certificate a definite sum, rather than an unlimited amount.

**Indebtedness.**

9. The reasons advanced above for naming a specific sum in specifying the value of real and personal property, apply equally to naming a definite sum as the highest amount of liability a corporation may at any time incur.

**Personal Liability of Stockholders.**

10. Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or such proportion of that sum as shall be required to satisfy such debts and obligations. See sections 14, 29 and 44 post.

This is the extent to which the private property of stockholders is subject to the payment of corporate debts, unless such liability is increased by the certificate of incorporation.

**CREATING AND DEFINING POWERS.**

SECTION 8. The certificate of incorporation may also contain any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any classes of the

stockholders; provided, such provisions are not contrary to the laws of this state.

This section is probably one of the most important of the act, and closely follows the New Jersey act as amended in 1898, known as section 8, subd. 7. How far powers may be assumed by the certificate of incorporation has not as yet been determined by the courts. Apparently powers may be *created* and *defined* by the certificate, which is tantamount to the making of law, and certainly it may be said that this section grants greater powers than those expressly given by the general act.

"The right of the Legislature to bestow on corporations the power of internal regulation; and the capacity of corporations to receive and exercise such power, even though it involve legislative power within the corporate limits, exist at common law: *Rice v. Foster*, 4 Harr. 479-503."

In this connection Mr. Dill says:

"This provision may also be construed as meaning that whereas incorporators are enabled to create and define the powers which the corporation shall possess, in addition to those given by section 1, that the certificate of incorporation shall then become the measure of the company's powers, and that powers not expressly or impliedly given by it are excluded.

"Various limitations and regulations of the powers of the corporation, the stockholders and the directors may be made: power may be given to the directors to make and alter by-laws; directors may be classified; the amount of interest required to be represented at any meeting in order to constitute a quorum may be prescribed; power to the directors to sell or mortgage any or all of the corporate property without the assent of the stockholders or with the assent of a majority or two-thirds of the stockholders; restrictions on the power of stockholders to examine the corporate books of account; it may be provided that each stockholder should have one vote for each five shares of stock held by him instead of one vote for each share. Other similar limitations and regulations might be made.

"Of late years there have come to the courts several cases involving the legality of voting pools or trusts. (See article in 31 *American Law Review*, p. 236, 'Pooling Contracts and Public Policy.') Briefly stated, the scheme is for several hold-



ers of shares to enter into an agreement to transfer their shares to a trustee, who has power to vote on them and to the extent of the shares so held by him, by the election of directors, dictate the policy and management of the company.

"The trustee issues to the shareholders in exchange for their shares trust certificates, which are usually made transferable in the same manner as stock. The duties of the trustee are fixed by the trust agreement.

"Two cases involving such agreements have recently come before the court of chancery of New Jersey, both of which were decided by Vice-Chancellor Pitney.

"The first case (*Cone v. Russell*, 48 N. J. Eq. 208) was decided in 1891. There the agreement was held to be void because the objects intended to be derived from the agreement were bad as against public policy and the carrying out of which also involved a breach of trust by one of the parties. It was not held that a voting trust was in itself void as against public policy. The vice-chancellor said: 'This conclusion [that the contract was void as against public policy] does not reach so far as to necessarily forbid all pooling or combining of stock, where the object is to carry out a particular policy with the view to promote the best interests of all the stockholders. The propriety of the objects validates the means and must affirmatively appear.'" *Ib.*, p. 215.

"In the second case (*White v. Thomas Inflatable Tire Co.*, 52 N. J. Eq. 178), decided in 1893, the agreement was declared to be invalid because it did not by its terms extend to certain shares of the company issued directly to persons who were not parties to the agreement.

"It was held to be immaterial whether they had or had not notice of the trust agreement.

"'As such holders they were entitled to have the other shares of stock in the company stand upon an equal footing,' and they were deprived of all voice in the management of the company. The issuing of the stock was, therefore, held to be 'a waiver and abandonment by the directors who united in issuing it, of their rights under the contract in question.'

"In the latter case, although there is a general dictum to the effect that all such trusts are illegal, yet the court, in its actual decision, lays stress on the fact that the 'contracts in question were not made a part of the certificate of organization or incorporated into the by-laws.'

"From these two cases it would seem that voting trusts,

where the object was in itself proper and lawful, provision for which was inserted in the certificate of incorporation, and formed a part of the original scheme of incorporation, on the basis of which the stock was issued, and the certificate of stock contained notice of the trust, might be upheld by the courts, under section 8, subd. 7, which states that the certificate of incorporation may contain any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stockholders; provided, such provision be not inconsistent with this act." Cumulative voting in elections of directors or managers is not possible in Delaware under article ix, section 6, of the state constitution.

#### **AUTHENTICATION AND RECORD OF CERTIFICATE.**

SECTION 9. The certificate shall be signed and sealed by the original corporators, or a majority of them, and shall be acknowledged before any officer authorized by the laws of this state to take acknowledgments of deeds, to be the act and deed of the signers, respectively, and that the facts therein stated are truly set forth; said certificate shall be filed in the office of the secretary of state, who shall furnish a certified copy of the same under his hand and seal of office, and said certified copy shall be recorded in the office of the recorder of deeds of the county where the principal office of said corporation is to be located in this state in a book to be kept for that purpose; said certificate or a copy thereof duly certified by the secretary of state, accompanied with the certificate of the recorder of the county wherein the same is recorded under his hand and the seal of his office, stating that it has been recorded, the record of the same in the office of the recorder aforesaid, or a copy of said record duly certified by the recorder aforesaid shall be evidence in all courts of law and equity in this state.

The acknowledgment may be taken:

#### **Within the State of Delaware.**

In the superior court, or before the chancellor or any judge or notary public or before two justices of the peace for the same county.

**Without the State of Delaware.**

Before any consul general, consul, vice-consul, consular agent or commercial agent of the United States, duly appointed in any foreign country at the places of their respective official residence, before the judge of any district or circuit court of the United States, or the chancellor, or any judge of a court of record of any state, territory or country, or the mayor or chief officer of any city or borough, and certified under the hand of such chancellor, judge, mayor or officer, and the seal of his (office) court, city or borough by certificate indorsed upon or annexed to the certificate of incorporation, or such acknowledgment or proof may be taken in any such court and certified, under the hand of the clerk or other officer of said court, and the seal of said court, in like manner. In case of such certificate by a judge, the seal of his court may be affixed to his certificate, or to a certificate of attestation of the clerk or keeper of the seal. Also by any commissioner of deeds appointed by the governor in any of the states or territories of the United States or in the District of Columbia; the same to be certified, in like manner, under the hand and seal of the said commissioner or before a notary public of any state or territory or of the District of Columbia: Code 625-627.

**AMENDMENTS AND ALTERATIONS.**

SECTION 10. Amendments and alterations of the original certificate may be made by a supplemental certificate, made, signed, acknowledged, filed and recorded in the same manner in every respect as is provided in reference to the original certificate.

This section is evidently based upon the last paragraph of section 11 of the general incorporation act of 1883, and is inconsistent with the method of amendment provided by section 135, q. v.

**DIRECTION OF AFFAIRS BY INCORPORATORS.**

SECTION 11. Until the directors are elected, the signers of the certificate of incorporation shall have the direction of the affairs and of the organization of the corporation, and may take such steps as are proper to obtain the necessary subscrip-

tions to stock and to perfect the organization of the corporation.

### WHEN CORPORATE EXISTENCE BEGINS.

SECTION 12. Upon making the certificate of incorporation and causing the same to be filed and a certified copy thereof recorded as aforesaid, and paying the license tax therefor to the secretary of state, the persons so associating, their successors and assigns, shall from the date of such filing, be and constitute a body corporate, by the name set forth in said certificate, subject to dissolution as in this act elsewhere provided.

An express acceptance of an act of incorporation is not essential to the corporate existence, unless required by the act. An acceptance is implied from an organization of the corporators and the exercise of corporate powers.

An act incorporating, without condition, persons already associated in business, having been granted on application, and ascertaining the corporators, vests the franchise immediately, subject only to such acceptance as is shown by the exercise of the franchise: *Logan v. McAllister*, Del. Chancery Reports, 2, p. 176.

### DE FACTO CORPORATIONS.

The law on this point is stated in the case of *Stout v. Zulick* (48 N. J. Law, 599, 601), as follows: "In the absence of a statutory provision making shareholders liable in case of failure to comply with the requirements of the charter, or with the requirements of the act under which the company is incorporated, persons who have contracted with a de facto corporation, as a corporation, cannot deny its corporate existence in order to charge its stockholders individually as partners. . . . Where it is shown that there is a charter or a *law* under which a corporation with the powers assumed might lawfully be incorporated, and there is a *colorable compliance* with the requirements of the charter or law, and a *user* of the rights claimed under the charter or law, the existence of a corporation is established.

"And it is entirely settled that the corporate existence of such corporation de facto cannot be inquired into collaterally. It is, as to all who contract with it, to be assumed to be a corporation de jure. The legality of its corporate existence may be inquired into by the state, but not by any one else. And this is as true where the corporation is formed under a general law as it is where the corporate existence is claimed under a special charter. . . . Had this suit been brought against the company it could not have denied its corporate existence, neither can the

plaintiffs, who contracted with it as a corporation, do so." See also *Hackensack Water Co. v. De Kay*, 36 N. J. Eq. 548; *Rafferty Recr. v. Bank of Jersey City*, 33 N. J. Law, 368; *Stockton v. American Tobacco Co.*, 36 Atl. Rep. 971.

As pointed out above a court of equity is not the proper tribunal to inquire into the validity of such organization. The action must be brought in a court of law, on quo warranto, or information in the nature of quo warranto, by the attorney-general *in behalf of the state*.

The recording and filing of the certificate of organization are not conditions precedent to the legal existence of the corporation. They are merely necessary evidence of such existence: *Vanneman v. Young*, 23 Vr. 403.

### CAPITAL STOCK.

SECTION 13. The capital stock shall be paid in such amounts and at such times as the directors may require; and when any corporation is authorized to commence business. it may, if its whole capital stock has not been subscribed, open books for additional subscriptions to its capital stock; and when any stockholder fails to pay any instalment on his stock when requested by the directors, they may sell sufficient of the stock of such delinquent at public sale to pay the amount due, with cost and interest, having first given him twenty days' notice in writing, if he resides in the county, or, if not, by letter mailed to his last known address, of the time and place, when and where, the stock will be sold, or they may collect it by action at law; if no bidder can be had to pay the amount due on the stock and it cannot be collected then said stock may be forfeited to the corporation and the amount previously paid in, by the delinquent on the stock shall be forfeited to the corporation by order of the board of directors. and such stock sold by it, within one year from the time of such forfeiture; if the stock is sold, and there remains a surplus after the payment of the amount due, with interest and costs, such surplus shall be paid to the original owner of the stock, his executors, administrators or assigns.

For provisions as to action at law against delinquent stockholders, see section 16, post. See also section 29, post, as to authority of stockholders in making assessments on stock.

A corporation, when formed, may enforce payment of the subscriptions to its capital stock against persons who subscribed its articles of association before the corporate body had a legal existence: *Dorris v. French*, 4 Hun, 292; *Buffalo & N. Y. C. R. R. Co. v. Dudley*, 14 N. Y. 336; *Troy & Boston R. R. Co. v. Tibbitts*, 18 Barb. 297.

The vested right of a holder of common stock cannot be taken from him without his consent: *Hayes v. Commonwealth*, 82 Penn. St. Rep. 518.

When stock is declared forfeited, the liability of the holder thereof to the corporation for further payment thereon ceases: *Mills v. Stewart*, 41 N. Y. 389; *Small v. Herkimer Mfg. Co.*, 2 N. Y. 330.

The holding and owning of a share of common stock gives a right which cannot be divested without the assent of the owner and holder, or unless the power so to do has been reserved in some way: *Mech. Bank v. N. Y. & N. H. R. R. Co.*, 13 N. Y. 599.

After a forfeiture, the holder is divested of his title in the shares, which is then vested in the corporation and remaining stockholders: *Weeks v. Silver Islet C. M. & L. Co.*, 54 J. & S. 1; affirmed, 120 N. Y. 620.

A corporation must comply with all the conditions precedent to payment on the part of the subscribers before a suit can be maintained upon the subscription. Where a subscriber agreed to pay in certain instalments, after certain calls, the court held that there could be no recovery against him without proof that the calls had been duly made. The rule in New Jersey may be stated as follows: A subscriber is not bound to pay for his stock except in the manner prescribed by statute or defined in the charter, or by-laws, unless he waives these requirements: *Grosse Isle Hotel Co. v. L'Anson's Exrs.*, 42 N. J. Law, 10; affirmed, 43 N. J. Law, 442.

In construing a similar section in the railroad act the court of errors and appeals held that a suit by the company will not lie on a subscription until a call has been duly made: *Braddock v. R. R. Co.*, 45 N. J. Law, 363, 364; see *N. J. Midland Ry. Co. v. Strait*, 35 N. J. Law, 322.

Where the company has become insolvent and a receiver has been appointed, the court of chancery may direct the receiver to make calls: *Hood v. McNaughton*, 54 N. J. Law, 425; *Barkalow v. Totten*, 53 N. J. Eq. 573; *Hebbard v. Southwestern Cattle Co.*, 36 Atl. Rep. 122.

"A call is nothing more than an official declaration that the sums subscribed are required to be paid:" *Braddock v. R. R. Co.*, 45 N. J. Law, 363.

The unpaid and uncalled subscriptions for stock cannot be mortgaged or sold by the corporation. Where the call has been duly made, but not collected, an assignment of the amount already called is legal and valid: *Cook on Stocks, etc.*, section 111; see *N. J. Midland Ry. Co. v. Strait*, 35 N. J. Law, 322.

Where stock has once been rightfully issued, even though nothing has been paid on it by the subscriber, it can only be forfeited in the mode prescribed by the statute, and the procedure prescribed by the statute must be strictly followed: *Downing v. Potts*, 23 N. J. Law, 66.

The remedy by forfeiture is merely cumulative, and does not prevent an

action for the instalments until the forfeiture is resorted to: *Troy & Boston R. R. Co. v. Tibbitts*, 18 Barb. 297; *Northern R. R. Co. v. Miller*, 10 Barb. 260; *O., R. & C. R. R. Co. v. Frost*, 21 Barb. 541; *B. & N. Y. C. R. R. Co. v. Dudley*, 14 N. Y. 336; *Mann v. Currie*, 2 Barb. 294.

A purchaser of shares from a stockholder in an existing corporation had no interest in the application of the money paid therefor, but it is different with one who agrees to subscribe for shares in a corporation to be created: *Walker v. Anglo-Am. M. & T. Co.*, 72 Hun, 334.

After accepting the benefits under a plan adopted by its promoters, the corporation becomes subject to the terms of the plan: *Rogers v. New York & Texas Land Co.*, 134 N. Y. 197.

### LIABILITY OF STOCKHOLDERS.

SECTION 14. When the whole capital stock of a corporation shall not have been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of the par value of such share as fixed by the charter of the company, or its certificate of incorporation, or such proportion of that sum as shall be required to satisfy the debts of the company, which said sum or proportion thereof may be recovered as provided for in section 44 of this act. See notes to section 7, subd. 10.

In New York it is held that if a stockholder contemplating the insolvency of a corporation, in case his stock has not been fully paid for, assigns his shares to an irresponsible person to escape liability, he remains liable to the then creditors of the corporation: *Sinclair v. Dwight*, 9 App. Div. 297.

For provisions requiring a creditor to exhaust his remedy against corporate property before selling a stockholder's private property, see section 46, post.

Section 31, post, provides for certifying to the secretary of state the payment of instalments on capital stock.

### LIEN OF CORPORATION ON ITS CAPITAL STOCK.

SECTION 15. No corporation shall take as security for any debts a lien upon any part of its capital stock, or be the holder or purchaser of any part thereof, unless such lien or purchase

shall be necessary to prevent loss upon a debt previously contracted.

It is probable that the debts for which a corporation can take its own stock do not include assessments on the stock itself, but only such debts as are contracted in the ordinary course of business, nevertheless a corporation may have its own stock *forfeited* to it for the non-payment of assessments under the conditions fully set out in section 13.

Quære.—Who is to judge of the *necessity* for a corporation taking its own stock to escape loss upon a debt previously contracted? Must the corporation sue the debtor and have an execution returned unsatisfied in order to establish such necessity? Or is the corporation itself to decide this question?

At common law no such lien existed: Cook on Corporations, section 520.

When a lien is expressly given by its charter or by statute all persons dealing with the corporation are affected by it and must take notice of it: Cook on Corp., section 523, and cases cited.

There is at common law nothing to prevent a corporation from taking its own stock in payment or satisfaction of debts, and some cases hold that at common law a corporation may purchase its own stock, provided the purchase is bona fide and not in fraud of creditors: Verplanck v. Mercantile Ins. Co., 1 Edw. Ch. 83; Iowa Lumber Co. v. Foster, 49 Iowa, 25; Barton v. Port Jackson, etc., Co., 17 Barb. 397; Cooper v. Frederick, 9 Ala. 738; Gillet v. Moody, 3 N. Y. 479; Taylor v. Miami Exporting Co., 6 Ohio, 176; Ohio State Bank v. Fox, 3 Blatch. 431; Columbus Bank v. Bruce, 17 N. Y. 507.

Morawetz on Corporations, section 115, says:

"The general rule is that the corporation may receive shares in the company by way of gift or bequest, or in satisfaction of debts due the company which cannot be collected in any other manner. Where the company takes its own shares they are said not to be merged, but to be capable of reissue by the corporation. Under these circumstances, it is said, the shares do not become merged, but remain temporarily in abeyance, and may be sold again by the corporation. As a matter of fact, however, the shares are extinguished, and new shares are subsequently created in their place. By a fiction, these new shares are considered in all respects as if they were the old shares and the corporation merely an intermediary transferee; but it would be an absurdity to say that a corporation can really hold shares in itself." See Clark on Corporations, p. 153; State v. Smith, 48 Vermont, 266; Chicago, etc., Ry. Co. v. Town of Mar-seilles, 54 Ill. 145.



Stock belonging to the corporation shall not be voted upon directly or indirectly: Section 24, post.

### STOCK PERSONAL PROPERTY.

SECTION 16. The shares of stock shall be deemed personal property and transferable on the books of the company in the manner provided by the by-laws, and subscriptions therefor shall be made payable to the corporation, and shall be payable in such instalments and at such time or times as shall be determined by the directors or managers, and an action at law may be maintained in the name of the corporation to recover any portion of an instalment which shall remain due and unpaid for the period of twenty days after the application of the money which may arise from the proceeds of the sale of the delinquent shares of stock as herein provided; and whenever transfer of shares shall be made for collateral security, and not absolutely, the same shall be so expressed in the entry of the said transfer.

For other remedies against delinquent stockholders see section 13, ante.

The provisions of charters and by-laws, under the statute that stock of the corporation shall be transferable only on the books of the company, are intended for the protection of the company: *Matthews v. Hoagland*, 48 N. J. Eq. 455, 486.

"A certificate of stock accompanied by an irrevocable power of attorney, either filled up or in blank, is, in the hands of a third party, presumptive evidence of ownership in the holder. And where the party in whose hands the certificate is found is a holder for value, without notice of any intervening equity, his title cannot be impeached. The holder of the certificate may fill up the letter of attorney, execute the power, and thus obtain the legal title to the stock, and such a power is not limited to the person to whom it was first delivered, but enures to each bona fide holder into whose hands the certificate and power may pass:" *Prall v. Tilt*, 28 N. J. Eq. 479, 483; *Rogers v. N. J. Ins. Co.*, 9 N. J. Law, 167; *Broadway Bank v. McElrath*, 13 N. J. Eq. 26; *Hunterdon County Bank v. Nassau Bank*, 17 N. J. Eq. 496; *Mt. Holly Turnpike Co. v. Ferree*, 17 N. J. Eq. 117; *Del. & Atl. R. R. Co. v. Irick*, 23 N. J. Law, 321; *State, Bush v. Warren F. Co.*, 32 N. J. Law, 439.

The reason of the rule is stated in *Matthews v. Hoagland*, 48 N. J. Eq. 435, to be "that the record owner has done everything in his power to

effect the transfer, and by such act has assigned all interest he may have had and surrendered all indicia of ownership. As to third parties, holders for value, he is estopped from asserting ownership—as to volunteers, the gift is complete and irrevocable, *if inter vivos*:" *Ib.*, p. 490; see *Walker v. Dixon Crucible Co.*, 47 N. J. Eq. 342.

An agreement between the stockholders of a corporation that no one of them will sell, assign or dispose of his stock, without having first given the other parties an opportunity to purchase, does not preclude a party from transferring a legal title to his stock without the consent of the others, and in violation of the agreement, and this although the transferee was cognizant of the agreement, at the time of the transfer: *Argus Co. v. Manning*, 138 N. Y. 557.

A provision on the face of a certificate of stock that the shares therein referred to are held "subject to the conditions and stipulations contained in the articles of association above mentioned," is sufficient notice to put a purchaser of the shares upon inquiry to ascertain what the conditions and stipulations are: *Gibbs v. Long Island Bank*, 83 Hun. 92.

A certificate of stock, accompanied by an irrevocable power of attorney, either filled up or in blank, is, in the hands of a third party, presumptive evidence of ownership in the holder; and the title of a holder for value, without notice of intervening equity, cannot be impeached. Each bona fide holder, to whom the certificate is delivered, has power to fill up the certificate and thus obtain title: *Prall v. Tilt, 1 Stew. Eq.* 479. A voluntary transfer of stock perfected by delivery and acceptance becomes an executed contract, and is irrevocable by the owner: *Walker v. Dixon Crucible Co.*, 47 N. J. Eq. 342.

The relation of stockholder is established by the subscriptions and payment, and does not depend upon the issue of a certificate or other evidence of such right by the corporation: *Rutter v. Kilpatrick*, 63 N. Y. 604.

Even where the charter provides that shares are to be transferable upon the books of the corporation, the same may be effectually transferred as collateral security for debt, as against a creditor of the bailor by a delivery of the certificate with a blank irrevocable power of attorney to transfer: *Broadway Bank v. McElrath*, 2 Beas. 24. Equity will compel the transfer of shares to the equitable owner thereof and will restrain those fraudulently refusing to transfer stock from voting the stock to the prejudice of the real owners: *Archer v. Am. Water Works Co.*, 50 N. J. Eq. 33.

A stockholder may proceed against a corporation if it negligently cancels his stock and issues certificates therefor to another: *St. Romes v. Levee Cotton Co.*, 127 U. S. 614.

It should be noted that the personal remedy against delinquent stockholders is deferred until twenty days after the application of the proceeds of the sale of the delinquent shares of stock. The corporation must first proceed against the stock itself for unpaid assessments, and can hold the stock-

holder personally liable only for the balance remaining due after the sale of the stock.

A purchaser of stock need only look to the title of his vendor on the books of the company, and is not affected by previous irregularity in the transfer: *W. & Phila. Turnpike Co. v. Bush*, 1 Harr. 44.

A subscription to a common object with others, though gratuitous, creates a legal liability.

If on a condition, the condition must be performed before a right of action accrues: *Norton v. Janvier*, 5 Harr. 346.

Persons engaged in organizing a corporation, who induce others to subscribe for stock, by issuing statements and prospectuses, are liable for damages if they make material misrepresentations, or conceal material facts, to the injury of those whom they induce to subscribe, and this liability extends to all those who are induced by their agents to subscribe for shares: *Walker v. Anglo-Am. M. & T. Co.*, 72 Hun, 334; *Brewster v. Hatch*, 122 N. Y. 349; *Morgan v. Skiddy*, 62 N. Y. 319; *Getty v. Devlin*, 54 N. Y. 403; 70 N. Y. 504.

#### **VOTING. LIST OF STOCKHOLDERS.**

SECTION 17. After the first election of directors no stock shall be voted on at any election which shall have been transferred on the books of the company within twenty days next preceding such election, and it shall be the duty of the officer who shall have charge of the transfer books to prepare and make, at least ten days before every election, a complete list of stockholders entitled to vote, arranged in alphabetical order. Such list shall be open at the principal office or place of business for said ten days, to the examination of any stockholder, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present. Upon the neglect or refusal of the said directors to produce such list at any election they shall be ineligible to any office at such election. The stock ledger, or if there be none, then the transfer books of the company, shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the company or to vote, in person or by proxy, at any election. The original or duplicate books of any corporation organized under this act, in which the transfers of

stock shall be registered, and the original or duplicate books containing the names and addresses of the stockholders, and the number of shares held by them, respectively, shall, at all times, during the usual hours for business, be open to the examination of every stockholder at its principal office or place of business in this state, and said original or duplicate books shall be evidence in all courts of this state.

In regard to the requirements of voting this section is practically the same as 17 Del. Laws, chapter 147, section 22.

Corporation books are evidence in a suit between the company and a corporator.

A member of the company is not a competent general witness for the plaintiff in such suit: *Jefferson v. Stewart*, 4 Harr. 82.

Plaintiff's book in which the minutes of its proceedings are kept and also containing a copy of its by-laws which were adopted on the report of a committee of the directors, admitted in evidence, though objected to as not being the original report of said committee: *Beeber v. Walton, Whann & Co.*, 7 Houst. 471.

"Entries in the books of a corporation are, as a general rule, competent evidence of the proceedings of the corporation and of the acts and votes of its officers transacted at official meetings; but such entries are not notice to third persons of the acts or resolutions entered upon its minutes. As to third persons, the books of a corporation are private books, and such persons are not chargeable with knowledge of matters there recorded any more than a third person would be chargeable with knowledge of entries made against him in the books of a private person:" *Wetherbee v. Baker*, 35 N. J. Eq. 501, 509, 510; *North River Meadow Co. v. Christ Church*, 22 N. J. Law, 424; and see *Van Hook v. Summerville Mfg. Co.*, 5 N. J. Eq. 137.

It will be noted that no stock can be voted on which shall have been transferred on the books of the company within twenty days next preceding such election, and that a complete list of the stockholders entitled to vote shall be prepared at least ten days before every election.

In the matter of the petition of *Vernon, et al.*, 1 Penn. 202, it was held that under 17 Del. Laws, chapter 147, section 22, an election for directors of a corporation at which four shares of stock were voted, which were transferred to the voters on the day of the election, was void.

Notice must be served on the corporation of an application to set aside its election of directors: *Ib.*

The list of stockholders does not "operate as a registry of voters. The right of the stockholder to vote does not depend upon his name being

contained in the list; on the contrary, the statute expressly declares that the books of the corporation shall be the only evidence who are the stockholders entitled to vote:" *Downing v. Potts*, 23 N. J. Law, 66-76.

No stockholder is bound to vote for a larger number of persons than he chooses: *Vandenburgh v. Broadway Ry. Co.*, 29 Hun, 356.

If votes erroneously rejected would, if received, have elected a certain ticket, the election will be set aside: *In re L. I. R. R. Co.*, 19 Wend. 37; *ex parte Murphy*, 7 Cow. 153.

The power of attorney need not be in any prescribed form, nor be executed with any particular formality. It is sufficient if it appear on its face to confer the requisite authority, and that it be free from all reasonable grounds of suspicion of its genuineness and authenticity: *In re Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529.

A proxy need not be a stockholder: *In re Lighthall Mfg. Co.*, 47 Hun, 258.

Stock held by the company itself cannot be voted on (section 24, post).

Stock held by executor or trustee can be voted on (section 23).

Hypothecated stock can be voted on unless pledgee has express power to vote (section 23).

Every corporation shall maintain a principal office in this state and have an agent resident of this state in charge thereof, wherein shall be kept the original or duplicate stock and transfer books of the corporation; in other words, a Delaware corporation must dwell in the place of its creation, and *maintaining* a principal office gives the corporate tree a root-hold in Delaware soil.

This is the legislative prohibition against "tramp" corporations.

The statute requires that the principal office shall be a place of business existing in fact, open during the usual hours of business and accessible to the public.

The agent ought to be an adult resident of Delaware or a Delaware corporation empowered by its charter to act as such agent.

It is well here to call attention to the serious consequences of a failure to *maintain* a *principal office* in this state.

The supreme court of Minnesota has held in a late case as follows:

"Words need not be wasted in demonstrating that for the past three years the stockholders and officers of the corporation have been engaged in evading and violating that section of the statute under which the corporation was organized, which requires that the place of business and their

books be kept in this state. This is an abuse and misuser of its corporate rights, powers and franchises which justify and demand a forfeiture thereof:" State ex rel. v. Park & Nelson Lumber Co., 1 Am. and Eng. Corp. Cases (N. S.), pp. 24, 26.

It has been repeatedly held in many states that such failure makes the members of the corporation liable as partners for debts contracted by the corporation.

See Hill v. Beach, 12 N. J. Eq. 31; Booth v. Wonderly, 36 N. J. Law, 250; Kruse v. Dusenbury, 1 City Court Sup. 87; Montgomery v. Forbes, 148 Mass. 249; Thompson on Corporations, Vol. 6, section 7895, p. 6273.

Contra.—Demarest v. Flack, 128 N. Y. 205; Lancaster v. A. I. Co., 140 N. Y. 576; Cook on Stocks, etc., p. 319; Stout v. Zulick, 48 N. J. Law, 599.

This statute differs in an important particular from the New Jersey statute in that either the original or *duplicate* stock and transfer books must be kept in the principal office in Delaware; the New Jersey act, on the contrary, requires the *original* books to be kept in New Jersey.

Delaware's liberality in this respect will doubtless be of great convenience to those corporations whose business is largely conducted in other states.

For the purpose of avoiding litigations by stockholders having but a small interest in the company, and more especially to prevent rival concerns from prying into the private accounts and business of the company by purchasing a few shares of stock, it is common to insert in the certificate of incorporation, as a limitation upon the powers of the stockholders (see section 8) a clause substantially as follows:

"The directors shall from time to time determine whether and to what extent, and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation except as conferred by statute or authorized by the directors, or by a resolution of the stockholders."

The statute gives each stockholder the express right to examine the stock and transfer books at the company's principal office at all times during business hours, and if that right is denied to him it would seem that he has a clear remedy by mandamus.

A refusal to allow a stockholder's authorized attorney to examine the books was a denial of the stockholder's rights: *Mitchell v. Rubber Reclaiming Company*, 24 Atl. Rep. 407.

A stockholder in a private corporation has such an interest in it and its affairs as will entitle him to an inspection and copies of its books, papers and accounts on reasonable and proper occasion, and when they become material to him as evidence in a suit with another. When this right is denied him by the company, or any of its agents having the custody of said books, there being no other specific remedy, a writ of mandamus will issue to enforce the same.

A foreign corporation, holding property and doing business within this state, is considered and treated as a domestic corporation, having the same rights and protection in the carrying on of its business and enforcement of its contracts, and being subject to the same duties and answerable to the same tribunals and in a similar manner, as domestic corporations.

A non-resident stockholder of a foreign corporation, said corporation owning property and doing business in this state, has a right to inspect and make copies of the books of said corporation for use in a suit in another state, they being in the custody of its president residing in this state, and is entitled to a writ of mandamus for the enforcement of said right against said president, he being within the jurisdiction of this court: *Richardson v. Swift*, 7 Houst. 137.

### **DIVIDENDS.**

SECTION 18. No corporation created under the provisions of this act, nor the directors thereof, shall make dividends except from the surplus or net profits arising from its business, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of its capital stock, or reduce its capital stock, except according to this act, and in case of any violation of the provisions of this section, the directors under whose administration the same may happen shall be jointly and severally liable in an action on the case at any time within six years after paying such dividend to the corporation and to its creditors or any of them in the event of its dissolution or insolvency, to the full amount of the dividend made or capital stock so divided, withdrawn, paid out, or reduced, with interest on the same from the time such liability accrued; provided, that any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate him-

self from such liability by causing his dissent to be entered at large on the books containing the minutes of the proceedings of the directors, at the time the same was done, or forthwith after he shall have notice of the same, and by causing a true copy of said dissent to be published, within two weeks after the same shall have been so entered, in a newspaper published in the county where the corporation has its principal office.

See also section 137, post, and notes.

Directors of a corporation have no right to pay dividends unless they leave the capital stock unimpaired: *Berwind-White Coal Mining Co. v. Ewart*, 11 Misc. R. 490.

This section is intended to prevent the division, distribution, withdrawal and reduction of the property of a corporation below the sum limited in its charter: *Williams v. W. U. T. Co.*, 93 N. Y. 187; *Rorke v. Thomas*, 56 N. Y. 559.

It would also appear that stockholders are liable to creditors for dividends paid out of the capital stock, thus in *Williams v. Boyce*, 38 N. J. Eq. 364, it was held that an express statutory provision, holding corporation directors personally responsible for dividends paid out of the capital instead of the profits, does not exonerate the stockholders for liability to repay such dividends for the benefit of the creditors of the corporation. "It is undeniably true, as a general proposition, that stockholders are liable in equity to repay, for the benefit of the creditors of the corporation, money which has been paid to them out of the capital stock. This is not based on any statute, but upon the equitable ground that the stock is regarded as a trust fund for all the debts of the corporation, and no stockholder can entitle himself to any dividend or share of it until all the debts are paid. And the remedy is in equity and not at law."

Dividends are payable to the person in whose name the stock stands on the books of the corporation or its legal representatives. Officers of a corporation are not required to demand production of the certificate of stock before paying dividends thereon: *Brisbane v. D. L. & W. R. R. Co.*, 94 N. Y. 204; *Jermain v. L. S. & M. S. Ry. Co.*, 91 N. Y. 483; *Boadman v. Same*, 84 N. Y. 157.

When a dividend is declared it becomes a debt due from the corporation to the individual stockholder, and after demand of payment, an action at law may be maintained for its recovery: *King v. Paterson & H. R. R. Co.*, 29 N. J. Law, 504.

#### **FALSE STATEMENT.**

SECTION 19. If the directors or officers of any corporation organized under the provisions of this act, shall knowingly cause to be published or given out any written statement or



report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published or given out, or assenting thereto, shall be jointly and severally, individually liable for any loss or damage resulting therefrom.

This section applies to "directors or officers," and does not include incorporators who signed the certificate of organization: *Thomson-Houston Elec. Co. v. Murray*, 37 Atl. Rep. 443.

Quære.—Would not this section make directors and officers liable to the *corporation* itself or its *stockholders* for any loss or damage resulting from such false statement?

#### NUMBER OF DIRECTORS AND HOW ELECTED.

SECTION 20. The business of every corporation organized under the provisions of this act, shall be managed by a board of not less than three directors, except as hereinafter provided, each of whom shall own in his own right not less than three shares of capital stock; they shall hold office until their successors are respectively elected and qualified, and a majority of them shall constitute a quorum for the transaction of business, and at least one of whom shall be a resident of this state. All elections for directors shall be by ballot, and shall be held in this state unless the by-laws otherwise provide; and in the first instance, the directors shall be elected at a meeting held before the corporation is authorized to commence business, and thereafter at an annual meeting of the stockholders to be held on the day and at the place named in the by-laws, and which shall not be changed within sixty days next before the day on which the election is to be held, and notice of any change shall be given to each stockholder twenty days before the election is held; and if, for any cause, an election is not held on the day named in the by-laws, a special meeting for that purpose shall be called within thirty days thereafter, of which due notice shall be given by the secretary to each stockholder, in person or by letter mailed to his last known address.

A stockholder shall be entitled to one vote for each share of stock he may hold and may vote at any meeting by proxy, in writing, signed by him, and attested in such manner as the by-laws may prescribe; and a vacancy in the board of directors shall be filled by the board, and the directors so appointed shall hold office until the next annual election and until their successors shall be duly elected and qualified.

The directors of any corporation organized as aforesaid, may, by a vote of the stockholders, be divided into one, two or three classes, the term of office of those of the first class to expire at the annual meeting next ensuing, of the second class one year thereafter, of the third class two years thereafter; and at each annual election held after such classification, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire.

The stockholders, as such, have no power to make any contract or execute any work. Their power is confined to electing directors and advising them in their conduct of the business of the company: *Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq. 445.

While it is the duty of courts to protect corporations from unauthorized acts of its officers, yet when directors permit its officers to hold themselves out as clothed with full power to manage all its affairs for a long time, and thus lead innocent persons to contract with them, they cannot repudiate such contracts by invoking a by-law which they had allowed to fall into disuse: *Parmelee v. Associated Physicians & Surgeons*, 11 Misc. R. 363.

The board of directors must act as a board. A single director has no power merely by virtue of his office. For any power he undertakes to exercise he must get authority from the board: *Titus v. Cairo & Fulton R. R. Co.*, 37 N. J. Law, 98.

No director can vote at a meeting of the board of directors by proxy: *The Craig Med. Co. v. The Merchants' Bank of Rochester*, 59 Hun. 561.

He can loan money to it and become its creditor, and he can receive by the act of the corporation security for his debt: *Ib.*, 395.

He may foreclose a mortgage against the corporation, and may protect himself by bidding at the sale: *Ib.*, 395.

A majority of the directors of a corporation is a quorum, and a majority of such quorum when convened can do any act within the power of the directors: *Wells v. Rahway White Rubber Co.*, 19 N. J. Eq. 402; *Barnert v. Paterson*, 48 N. J. Law, 400; *Met. Tel. Co. v. Dom. Tel. Co.*, 44 N. J. Eq. 573; *Cadmus v. Farr*, 47 N. J. Law, 208.

Directors may select an executive committee and give it power to trans-

act the business of the company during intervals between meetings of the board and such committee may delegate one of its number to do ministerial acts, indorsing checks, etc.: *Sheridan El. Lt. Co. v. Chat. N. Bk.*, 127 N. Y. 517.

Beyond the powers conferred upon them by the charter and the powers of the corporation itself the directors cannot go. Within that scope their discretion is controlling, and a court of equity will not interfere at the instance of dissatisfied stockholders with the exercise of their judgment. But while they have these broad powers they must exercise them for the benefit of the company, and not for their own benefit. They are trustees for the stockholders, and being trustees they can make no binding contracts with the company. An express contract between a director and the corporation is not void, but voidable, to be avoided at the option of the cestui que trust, exercised within a reasonable time. It matters not whether the contract be fair and honest and to the advantage of the company. Said Mr. Justice Dixon, in the case of *Stewart v. Lehigh Valley R. R. Co.*, 38 N. J. Law, 505, at p. 522: "The vice which inheres in the judgment of a judge in his own cause contaminates the contract; the mind of the director or trustee is the forum in which he and his cestui que trust are urging their rival claims, and when his opposing litigant appeals from the judgment there pronounced that judgment must fall. It matters not that the contract seems a fair one. Fraud is too cunning and evasive for courts to establish a rule that invites its presence, . . . nor is it proper for one of a board of directors to support his contract with his company upon the ground that he abstained from participating as director in the negotiation for and final adoption of the bargain by his co-directors, the very words in which he asserts his right declares the wrong; he ought to have participated, and in the interest of the stockholders, and if he did not, and they have thereby suffered loss, of which they shall be the judges, he must restore the rights he has obtained—he must hold against them no advantage that he has got through neglect of his duty toward them." (See also *Guild, Exr., v. Parker, Recr.*, 43 N. J. Law, 430; *Elkins v. Camden & Atl. R. R. Co.*, 36 N. J. Eq. 467, at p. 470; *Gardner v. Butler*, 30 N. J. Eq. 702; *Stroud v. Consumers' Water Co.*, 56 N. J. Law, 422, 427.

This rule, however, is for the benefit of the corporation, and as to others the contract is valid and enforceable: *Barnes v. Trenton Gas Light Co.*, 27 N. J. Eq. 33; *Stratton v. Allen*, 16 N. J. Eq. 229. And so where the director of a bank, who was also a member of the firm, offered a note belonging to the firm to the bank, for discount, which was procured from the maker by fraud, of which he as a member of the firm had notice, it was held that the knowledge of the director was not constructive notice to the bank, such director not having acted with the board in making the discount and not having communicated his knowledge to any of the officers of the bank. He was regarded in the transaction as a stranger: *First Natl. Bank of Hightstown v. Christopher*, 40 N. J. Law, 435.

A director of two corporations which contract with each other is in-

capacitated to take part in settling the terms of the contract: *Met. Tel. Co. v. Dom. Tel. Co.*, 44 N. J. Eq. 568, 573.

"The directors of an incorporated company cannot speculate with the funds or credit of the company, and appropriate to themselves the profits of such speculations. They cannot, in making sales or purchases for the company, take advantage of their position as directors, and either directly or indirectly speculate upon the company. If they are the only persons interested as stockholders, yet, if such speculations impair the capital stock, and have a tendency to substitute a fictitious for a real value, such transactions are opposed to the policy of their act of incorporation, and cannot, in any manner be countenanced by a court of equity." *Redmond v. Dickerson et al.*, 9 N. J. Eq. 507, 516.

The directors are vested with no title to the corporate property; they have legal privity with the corporation only, and for the consequences of their malfeasance or want of due care their liability is to it, and it is only on the refusal of the corporation to sue that a stockholder may do so on behalf of the corporation for the ultimate benefit of himself and other stockholders: *Empire State Sav. Bk. v. Beard*, 81 Hun, 184, and cases cited; *Bloom v. Nat. United Benefit Sav. & Loan Co.*, 81 Hun, 120.

A director cannot, while serving as such, divest himself of the knowledge which he has acquired in confidence of corporate affairs or of the value of corporate property, nor be allowed to use it to his own advantage: *Hoyle v. Plattsburgh & Montreal R. R. Co.*, 54 N. Y. 329.

The relation existing between a director and the corporation is that of trustees: *Butts v. Wood*, 37 N. Y. 317.

When a director makes an assignment of his estate for the benefit of creditors he ceases to be a director *de jure*, and the company may declare his office vacant and elect his successor, but as to the third parties dealing in good faith with the company, without notice of any infirmity in the title of the director, he must be regarded as a director *de facto*: *Kuser v. Wright*, 52 N. J. Eq. 825, reversing *Wright v. First Natl. Bank*, 52 N. J. Eq. 392.

A person is not a director though nominated and elected until he has accepted the office either expressly or impliedly: *Whittaker v. Amwell Nat. Bank*, 52 N. J. Eq. 400, 415.

"It may sometimes become necessary in the transaction of some kind of business of a corporation to have the consent of all the stockholders, or of a certain proportion of them, and resolutions giving such consent or advice have the effect of empowering the directors to act. But the board of directors is the legal executive, recognized as such not only in practice and on principle, but by the statute."

"If the stockholders in a corporation disapprove of the company's management, conducted without fraud or gross abuse of trust, or consider their speculation a bad one, their remedy is to elect new officers or sell their shares and withdraw." *McGill, C.*, in *Benedict v. Columbus Construction Co.*, 49 N. J. Eq. 23.

"Individual stockholders cannot question, in judicial proceedings, cor-

porate acts of directors if the same are within the powers of the corporation, and, in furtherance of its purposes, are not unlawful or against good morals, and are done in good faith and in the exercise of an honest judgment. Questions of policy of management, of expediency of contracts or action, of adequacy of consideration not grossly disproportionate, of lawful appropriation of corporate funds, are left solely to the honest decision of the directors if their powers are without limitation and free from restraint. To hold otherwise would be to substitute the judgment and discretion of others in the place of those determined on by the scheme of incorporation:" *Green, V. C.*, in *Ellerman v. Chicago Junction, etc.. Co.*, 49 N. J. Eq. 217, 232. See also *Edison v. Edison United Phonograph Co.*, 52 N. J. Eq. 620.

### OFFICERS.

SECTION 21. Every corporation organized under this act shall have a president, secretary and treasurer, who shall be chosen either by the directors or stockholders, as the by-laws may direct, and shall hold their offices until their successors are chosen and qualified; the president shall be chosen from among the directors; the secretary shall be sworn to the faithful discharge of his duty, and shall record all the proceedings of the meetings of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer may be required to give bond in such sum, and with such surety or sureties as shall be provided by the by-laws, for the faithful discharge of his duty.

The secretary and treasurer may or may not be the same person.

The bond of an officer of a corporation is not affected by an increase of its capital merely: *Bank v. Wollaston*, 3 Harr. 90.

The limitation of suits on such bonds is two years from the accruing of the cause of action; and in case of a deficit the act would begin to run, not from the time funds were actually withdrawn, but from the time the officer failed to pay them over according to his bond: *Ib.*

The secretary, who as such is the keeper of the books of an incorporated company, and who is counsel for it in the trial of a case against it in court, is not a competent witness in it: *Bancroft v. Wil. Conf. Acad.*, 5 Houst. 577.

For decision on the form and sufficiency of bond see *Farm. & Mech. Bank v. Polk*, 1 Del. Chan. 167.

Where A becomes surety for the faithful discharge for B's duties, the obligation continues so long as B holds the office by virtue of the appoint-

ment under which the bond is given. Though the office be usually treated as elective for one year only, yet the surety will be liable for B's acts if B continue in office after the year. But on B's re-election and qualification for a second term the liability on the old bond ceases: *Sparks v. Farmers' Bank*, 3 Del. Chan. 274.

The bank owes the sureties good faith, not diligence, in the examination of the officers' accounts: *Ib.*

In a court of equity the statute of limitations on a cause of action which has been fraudulently concealed, runs from the *discovery of the fraud*: *Ib.*

The powers of the officers of a corporation over its business and property are strictly those of agents—powers either conferred by the charter, by-laws or delegated to them by the directors or managers: *Fifth Ward Savings Bank v. First Natl. Bank*, 48 N. J. Law, 513, 525; *Stokes v. N. J. Pottery Co.*, 46 N. J. Law, 237.

Where an officer is clothed with apparent authority, although not inherent in his office, the general doctrine of agency applies, and the corporation may be liable for his acts. The authority of the officer does not depend so much on his title, or on the theoretical nature of his office, as on the duties he is in the habit of performing: *Fifth Ward Savings Bank v. First Natl. Bank*, 48 N. J. Law, 513, 525; *Taylor on Corporations*, sections 202, 236, 244; see also *Blake v. Domestic Mfg. Co.*, 38 Atl. Rep. 241.

As to acts of an extraordinary nature, an officer must have express authority from the board of directors. He cannot confess judgment against the company: *Stokes v. N. J. Pottery Co.*, 46 N. J. Law, 237.

The proper way to sign corporate contracts is: The  
 Company, by President  
 (or other officer as the case may be), and not merely the name of the officer followed by his official title. Such titles are sometimes held to be mere words of description. In New York where a bank discounted for a third party a negotiable promissory note reading "We promise to pay," etc., and signed by the individual names of the parties, with the addition of the words "President" and "Secretary," it was held to be the note of the individuals signing and not the note of the company: *First Natl. Bank v. Wallis*, 150 N. Y. 455.

A contract executed in the name of the corporation by its president and secretary and sealed with its corporate seal, is valid and binding upon the corporation until evidence to the contrary shall be produced: *Jourdan v. L. I. R. R. Co.*, 115 N. Y. 385.

Mr. Taylor says concerning de facto officers:

"If a body of men acting as a corporation permits certain persons to act openly as corporate officers, or if it is permitted by the directors, assuming them to have had the power to appoint the officer in question, the corporation will not, to the detriment of persons who in good faith have acted on the assumption that the persons acting as officers were the officers they assumed to be, be permitted to impeach the validity of their acts and contracts on the ground that such persons were not legally corporate officers:" *Taylor on Corporations*, section 189.

**AGENTS AND FACTORS.**

**SECTION 22.** The corporation may have such other officers, agents and factors as may be deemed necessary, who shall be chosen in such manner and hold their offices for such terms as may be prescribed by the by-laws, or determined by the board of directors, and may secure the fidelity of any or all of such officers by bond or otherwise; and may also provide by the by-laws for the qualification of any or all of such officers before any person authorized by law to administer an oath.

A failure to elect annually a president, secretary, treasurer or other officers shall not dissolve a corporation.

Any vacancy occurring among the directors or in the office of president, secretary or treasurer, by death, resignation, removal or otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision, such vacancy shall be filled by the board of directors.

See section 2, subd. 5, and notes.

The by-laws of a corporation are evidence against its officers, though they be not members of the corporation: *Bank of Wil. & Brand. v. Wollaston*, 3 Harr. 90.

A corporation is liable for the negligence of its servant, who may be proved such, without showing an appointment under the corporate seal: *Wilson v. Rockland Manf. Co.*, 2 Harr. 67.

The acts of an agent in the general course of his employment are evidence against the principal, without proof that they were done by his orders: *Waples v. Waples*, 1 Harr. 474.

It was held by Clayton, C. J., in the case of *Randel v. Ches. & Del. Canal Co.*, that in an action of covenant against a corporation a contract made and executed by a committee of the board of directors, but not under the corporate seal, is not evidence; though the authority of the committee be proved, and the contract actually recognized and acted upon by the company: 1 Harr. 233.

What constitutes an agency is a question of law addressed to the court: *Coe v. Johnson*, 6 Houst. 9.

The ancient rule of the common law on this point has long been relaxed, if not entirely superseded, both in this country and in England, until at length corporations in regard to the appointment of agents and making of contracts are now placed on the same footing as individuals in this country. . . . It does not inure to the benefit of another. . . . : *Vandegrift v. Del. R. R. Co.*, 2 Houst. 287, 288.

A corporation can only act by and through the agency of its officers.

and in all transactions of an officer and agent of a corporation done with the approbation of, or by the authority of his principal, notice to the agent is notice to the principal, and the knowledge of the agent is the knowledge of the principal, for no principle of law is better settled: *Newport Natl. Bank v. Tweed*, 4 Houst. 225, 232.

A person dealing with a corporation is chargeable with notice of its powers and the purposes for which it was formed, and when dealing with its agents or officers is bound to know the extent of their power and authority. A corporation necessarily carries its charter wherever it goes, for that is the law of its existence: *Jennison v. The Citizens' Savings Bank*, 122 N. Y. 140; *Alexander v. Cauldwell*, 83 N. Y. 480; see also *Patterson v. Robinson, et al.*, 116 N. Y. 193; *Wilson v. Kings Co. E. R. R. Co.*, 114 N. Y. 491; *Martin v. N. F. P. Co.*, 122 N. Y. 165; *Wahlig v. S. P. M. Co.*, 25 N. Y. State Rep. 864.

### **TRUSTEE MAY VOTE STOCK.**

SECTION 23. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy may represent said stock and vote thereon.

A formal transfer of stock on the books of the company is not necessary to enable an executor, administrator, etc., to vote. The corporation books are evidence of the ownership of the stock by the testator or intestate, and this section gives to the executor or other representative *virtute officii* the right to vote thereon in his representative capacity: *In re Election of Cape May, etc., Nav. Co.*, 51 N. J. Law, 78.

### **STOCK BELONGING TO CORPORATION.**

SECTION 24. Shares of stock of the corporation belonging to the corporation shall not be voted upon directly or indirectly.

This prohibition applies to all stock standing in the name of the company itself, or one of its officers or any person holding in trust for it directly or indirectly: *McNeely v. Woodruff*, 13 N. J. Law, 352; *Matter of St. Lawrence S. B. Co.*, 44 N. J. Law, 529.

### **FIRST MEETING.**

SECTION 25. The first meeting of every corporation shall be called by a notice, signed by a majority of the incorpo-



rators named in the certificate of incorporation, designating the time, place and purpose of the meeting; and such notice shall, at least two weeks before the time of any such meeting, be published three times in some newspaper of the county where the corporation may be established, or have its principal place of business; or said first meeting may be called without such publication of notice if two days' notice be personally served on all the parties named in the certificate of incorporation, or if all the parties named in the certificate shall, in writing, waive notice and fix a time and place of meeting, then no notice or publication whatever shall be required of such first meeting.

Where all the incorporators but one were present at the first meeting, and he afterwards assented to what was done, the incorporation was held to be valid, although no notice was given: *Babbitt v. East Jersey Iron Co.*, 1 Stew. Dig., p. 208, section 13.

#### **BY-LAWS: BY WHOM MADE.**

SECTION 26. The power to make and alter by-laws shall be in the stockholders, but any corporation may, in the certificate of incorporation, confer that power upon the directors; by-laws made by the directors under power so conferred may be altered or repealed by the directors or stockholders.

See section 2, subd. 6, and notes.

A person has the right to treat the by-laws given to him on his becoming a member of the association as all the by-laws such association has, and he is not bound to take notice of modification of such by-laws, with respect to withdrawing, on the record of the company simply without further notice to him; which notice must be proven by the defendant company to have been given: *McKenney v. Diamond State Loan Assn.*, 8 Houst. 557.

A court will not presume a by-law, although upon an issue of fact depending before them, they might instruct the jury to find one, upon evidence of long and ancient usage: *State v. Wilmington City Council*, 3 Harr. 294-300.

The right of the legislature to bestow on corporations the power of internal regulation; and the capacity of corporations to receive and exer-

cise such power, even though it involve legislative power within the corporate limits, exist at common law: *Rice v. Foster*, 4 Harr. 479-503.

### INCREASE OF AUTHORIZED CAPITAL STOCK.

SECTION 27. Every corporation organized under the provisions of this act, may, at any meeting called for that purpose, notice of which shall be given, as required for the first meeting, increase its capital stock and the number of shares therein until it shall reach the amount named in the original certificate, and every stockholder shall have a certificate under the seal of the corporation, signed by the president and treasurer, certifying the number of shares owned by him in such corporation.

This section is taken from section 18 of the general incorporation act of 1883.

A statement issued by an officer of a loan association under the seal of the corporation in lieu of a certificate of stock, the company being in the habit of thus certifying to stockholders, is binding upon the corporation, and a party making a loan of money on the faith of such statement may recover from the corporation the value thereof: *Richardson v. Del. Loan Asso.*, 9 *Houst.* 354.

A contract providing for the sale of stock of a company for \$10,500, \$3,000 cash, and the balance to be paid along, as may suit the vendee, within five years; interest to be computed at five per cent., containing no agreement as to the time of any of the payments of the principal or interest, no statement as to the time when the stock is to be transferred, with no security for the deferred payments, is too uncertain to be specifically enforced in chancery at the suit of the vendee.

Where, by the terms of an agreement to buy stock of a company, a portion of the purchase price is to be paid in cash, and the balance within five years, and no payment has been made, an offer by letter to pay the whole sum after the five years have expired, and after the vendor has discovered the stock to be more valuable, is not such a tender as to entitle the vendee to specific performance.

Where one who is secretary of a stock company agrees with a stockholder to buy his stock, and, during the negotiations, endeavors to convince the vendor that the stock is not worth par, and that he does not know where he can place it, while in fact he wished it for himself, and from his official position knows the stock is of much greater value, and when he has made no payment on the stock, specific performance will not be decreed, but vendee will be left to a suit at law to recover any damages he may have suffered from the breach of contract: *Todd v. Diamond State Iron Co.*, 8 *Houst.* 372.

### **INCREASE OF CAPITAL STOCK BY AMENDMENT TO CERTIFICATE.**

SECTION 28. Whenever more capital stock is deemed necessary for the transaction of the business of any corporation, created under the provisions of this act, or existing under the laws of this state, an additional certificate may be filed, under the hands and seals of two-thirds in interest of the stockholders, or their legal representatives, stating the amount of such additional capital required, which shall be acknowledged, filed and recorded in the manner heretofore provided for in this act, with respect to the original certificate; and the said corporation shall pay to the secretary of state the license tax required by law upon such increase of capital; provided, that for all stock, issued under any such supplemental certificate, such corporation, its directors and stockholders, shall be entitled to the benefits and subject to all the liabilities contained in this act as to such corporation.

This section is practically the same as paragraph 4 of section 18 of general incorporation act of 1883. (See section 135, post.)

### **ASSESSMENT OF STOCK.**

SECTION 29. The directors of every corporation organized under this act, may, from time to time, assess upon each share of stock not fully paid up such sum of money as two-thirds of the stockholders in interest shall direct, not exceeding in the whole the balance remaining unpaid on said stock up to the par value thereof; and such sum so assessed shall be paid to the treasurer at such times and by such instalments as the directors shall direct, the said directors having given thirty days' notice of the time and place of such payments in a newspaper of the county where such corporation is established or has its principal place of business, or by written notice mailed to each stockholder at his last known post-office address.

See section 7, subd. 10; also sections 13 and 16, ante, and notes.

An assurance given by the agent of the commissioner of a railroad company to procure subscriptions to the stock, to a subscriber at the time of his subscribing to it that if he would do so, the railroad of the company would be located and constructed by a route specifically designated by him, and on the faith of which he subscribed for one hundred shares of the stock, but which assurance was not embodied in the contract of subscription, was a collateral statement, and if the agent at the time he made it knew it to be untrue, and made it with the fraudulent intent to mislead and deceive the subscriber, it would amount to a fraud which will vitiate and avoid his contract of subscription.

If by the terms of the charter of the company and the contract of subscription, and the contract of subscription is in writing under the hand of the subscriber, the stock is to be paid for in such manner and proportion and at such times as shall be determined by the president and directors of the company and in such instalments as they shall require, provided that no payment shall be demanded until at least thirty days' public notice shall have been given in at least one newspaper published in the county in which such payment shall be demanded, and the payment of it is so called for, and published in five successive instalments, the six years' bar of the statute of limitation will not begin to run against the claim of the company from the date of the contract of subscription, as in the case of a promissory note payable on demand, but from the time when the cause of action accrued, which was not until it became payable according to the calls for the instalments and the thirty days' publication of them; and if they had been even so barred, the payment of the first within the six years would have taken the claim for the balance out of the operation of the statute: *Kent County R. R. Co. v. Wilson*, 5 *Houst.* 49.

The subscription to stock and the acceptance of a certificate for shares constitute a contract between the subscriber and the company by which the subscriber agrees to pay the remaining instalments on demand by the corporation: *Hood v. McNaughton*, 54 *N. J. Law*, 424.

From this agreement the subscriber cannot recede without the assent of the company: *Ib.*

This assent is evidenced by the consummation, in the form required by the statute, of the transfer by the entry of the name of the transferee on the registry of stockholders in the place of the subscriber, and the delivery of a new certificate to and in the name of the transferee: *Ib.*

An original subscriber may transfer his stock without the consent of the company thus evidenced and thereby vest in the purchaser his right in the shares and as between himself and such purchaser cast upon the latter the obligation to pay him such instalments as are called upon the stock, but the original subscriber cannot thereby impair or affect the contract rights of the company: *Ib.*

His liability to the company does not become extinguished until the purchaser is accepted by the company as the stockholders of record in his place: *Ib.*

A distinction is drawn between one who holds the stock by transfer and an original subscriber. The former may, it seems, in the absence of a fraudulent purpose, discharge himself of liability for unpaid instalments by due transfer of his shares, although the transfer may not be recorded on the books of the company: *Hood v. McNaughton*, 54 N. J. Law, 425, 428.

The latter cannot obtain immunity in that way: *Ib.*

Holders of stock given as bonus are liable on it to creditors, but not to the company: *Hebberd v. Southwestern Cattle Co.*, 36 Atl. Rep. 122, 127.

If the subscriber to stock enters into a corporation generally, without specific stipulations, he is bound and concluded by the action of a majority of the corporation; and if the legislature amends and changes the charter, with the assent of the company, he will not thereby be discharged from his liability for subscription of stock, made previous to the change of the charter, unless such change should increase the amount which he was originally bound to pay: *Del. R. R. Co. v. Thorp*, 1 *Houst.* 149.

No action will lie on a stock subscription where the terms of the subscription contain no promise to pay, and the charter only authorizes a forfeiture of stock for non-payment: *Odd Fellows' Hall Co. v. Glazier*, 5 *Harr.* 172.

### COLLECTION OF ASSESSMENT.

SECTION 30. If the owner of any shares shall neglect to pay any sum assessed, for thirty days after the time appointed for the payment thereof, the treasurer of the corporation when ordered by the board of directors, shall sell at public auction such number of the shares of such delinquent owner as will pay all assessments then due from him, with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement for three weeks successively, once in each week before the sale, in a newspaper of the county where such corporation is established; and notice shall be mailed by the treasurer of the corporation to such delinquent stockholder, if his post-office address is known twenty days before such sale.

These provisions for sale for non-payment must be strictly followed: *Downing v. Potts*, 3 *Zab.* 66.

**CERTIFICATE OF PAYMENT OF STOCK.**

SECTION 31. The president and directors with the secretary and treasurer of every corporation organized under this act, upon payment of each instalment of capital stock, and upon payment of each instalment of every increase thereof, shall make a certificate, stating the amount of the instalments so paid, and whether paid in cash or by the purchase of property, stating also the total amount of capital stock, if any previously paid and reported, which certificate shall be signed and sworn or affirmed to by the president, and secretary or treasurer, and they shall, within thirty days after the making of such payment or payments cause the certificate to be filed in the office of the secretary of state.

This section is based upon section 20 of the incorporation act of 1883, and closely follows section 25 of the corporation law of New Jersey, as to which Mr. Dill says that:

"No certificate of payment of capital stock is apparently required to be filed until the full amount of capital stock authorized by the certificate of incorporation has been paid in, and the words 'every increase thereof' contemplates an increase beyond the amount of capital stock limited in the original certificate, such increase being made by amendments to the original certificate."

It is held in New York under a similar provision to the Delaware act, "that all corporations should be organized with a bona fide capital stock, to be issued only for cash, labor or property:" *Gen. Elec. Co. v. Wightman*, 3 N. Y. App. Div. 118.

The statutory requirement that the payment of subscriptions to the capital stock of a corporation must be made in cash or property or services relates only to domestic corporations: *Boyer v. Fenn*, 18 Misc. 607.

Where a part or the whole of the stock of a corporation has been paid for by the purchase of property at its fair value, the holder of stock thus paid for is not afterwards liable either for calls by the corporation or for claims against it: *Powers v. Knapp*, 85 Hun. 38.

The application of an account for services rendered the corporation by a subscriber for original stock, is a payment in money within the meaning of this section: *Veeder v. Mudgett*, 95 N. Y. 295.

The statute is not violated in respect to the issuance of stock in payment for property, unless persons acting in bad faith put a fictitious value upon the property for the purpose of evading the statute and defrauding others: *Van Vleet v. Jones*, 75 Hun. 340.

See White's Manual, p. 126.

**PENALTY FOR DERELICTION OF OFFICERS.**

SECTION 32. If any of said officers shall neglect or refuse to perform the duties required of them in the preceding section for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted after the making of such payments as provided for in the preceding section and before the filing of such certificate.

Upon a default in filing the report, the directors are personally liable for all the debts of the corporation then existing, even though such debts are not due: *Carr v. Risher*, 119 N. Y. 177; affirming 50 Hun, 147.

A creditor consenting to non-filing of report cannot take advantage thereof: *Carraher v. Mulligan*, 54 Hun, 638; 28 St. Rep. 439.

No action can be maintained until thirty days after a written request has been made by a creditor or stockholder of the officers to make a certificate and their neglect or refusal so to do within that time: *Nassau Bank v. Brown*, 30 N. J. Eq. 478.

**REDUCTION OF CAPITAL STOCK.**

SECTION 33. Any corporation organized under this act, may reduce its capital stock at any time by a vote of, or by the written consent of stockholders representing two-thirds of its capital stock, and after notice of the proposed decrease has been mailed to the address of each stockholder at least twenty days before the meeting is held for that purpose; and a statement of the reduction shall be signed and acknowledged by the president and a majority of the directors, and filed and a certified copy thereof recorded in the same manner as certificates of incorporation are required to be. No such reduction, however, shall be made in the stock of any corporation until all its debts which are not otherwise fully secured shall have been paid and discharged.

See section 135, post. While this section contains no limitation upon the *amount* of the reduction of the capital stock, it is conceived that the stock cannot be reduced below two thousand dollars (section 6, subd. 4, ante).

**DISSOLUTION.**

SECTION 34. If it should be deemed advisable, in the judgment of the board of directors, and most for the benefit of any corporation organized under this act, that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder residing in the United States, beginning within said ten days cause a like notice to be inserted in a newspaper published in the county wherein the corporation shall have its principal office, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution so adopted by the board of directors, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time, for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two-thirds in interest of all the stockholders shall consent that a dissolution shall take place and signify their consent in writing, such consent together with a list of the names and residences of the directors and officers, certified by the president and secretary or treasurer, shall be filed in the office of the secretary of state, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at least once a week, in a newspaper published in said county; and upon the filing in the office of the secretary of state of an



affidavit of the manager or publisher of the said newspaper that said certificate has been published four weeks successively, and at least once a week in said newspaper, the corporation shall be dissolved; and the president and directors, or the managers of the affairs of the said corporation, at the time of its dissolution, by whatever name they may be known in law, shall be trustees of such corporation, with full powers to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation, at the time of its dissolution, as far as such moneys and property shall enable them.

Whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent in the office of the secretary of state, he shall forthwith issue a certificate of dissolution, which shall be published as above provided.

See sections 36 and 37 post.

Where the dissolution is by unanimous consent of all the stockholders, affidavit of publication is apparently not expressly required to be filed with the secretary of state as a condition precedent to legal dissolution, but it is the better practice to file such affidavit.

It rests in the judgment of the directors whether the stockholders shall be called together under this section. "It is well settled that the shareholders in a corporation cannot extinguish its charter or dissolve it, and that a court of equity cannot dissolve it at their instance. In the absence of a statutory provision the franchises can be declared forfeited and extinguished only at the suit of the state in an appropriate proceeding at law. . . . But when it plainly appears that the object for which the company is formed is impossible of attainment, it becomes the duty of the company's agents to put an end to its operations and wind up its affairs, and should they, even though supported by a majority of the shareholders, pursue operations which *must* eventually be ruinous, any shareholder feeling aggrieved would, upon plain equitable principle, be entitled to the assistance of this court, and a decree should be made compelling the directors to wind up the company's business and distribute the assets among those who are entitled to them, unless they can lawfully be used for other business purposes allowed by the charter:" *Benedict v. Columbus Construction Co.*, 49 N. J. Eq. 23, 26.

**POWERS OF TRUSTEES UPON DISSOLUTION.**

SECTION 35. The persons constituted trustees as aforesaid shall have authority to sue for and recover the aforesaid debts and property by the name of the trustees of such corporation, describing it by its corporate name, and shall be sueable by the same name for the debts owing by such corporation at the time of its dissolution, and shall be jointly and severally responsible for such debts to the amount of the moneys and property of such corporation at the time of its dissolution, which shall come to their hands or possession.

This section expressly limits the liability of the directors as trustees to the extent of the property and effects that shall come into their hands: *Hoffman v. Van Nostrand*, 42 Barb. 174.

**CONTINUANCE OF CORPORATION AFTER DISSOLUTION.**

SECTION 36. All such corporations, whether they expire by their own limitation, or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution, bodies corporate for the purpose of prosecuting and defending suits by or against them, and enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which said corporation shall have been established.

In a suit by stockholders of a dissolved corporation against the directors for mismanagement of its affairs, the corporation should be made a party, by virtue of this section. Creditors should likewise be made parties: *Camp v. Taylor*, 19 Atl. Rep. 968.

**CHANCELLOR MAY APPOINT TRUSTEES AND RECEIVERS.**

SECTION 37. When any corporation organized under this act shall be dissolved in any manner whatever, the chancellor, on application of any creditor or stockholder of such corporation, at any time, may either continue such directors, trustees as aforesaid, or appoint one or more persons to be receivers of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and prop-

erty due and belonging to the company, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the chancellor shall think necessary for the purpose aforesaid.

A receiver appointed by the circuit court of the city of Baltimore, in the state of Maryland, is not entitled to an injunction of the court of chancery of this state, to restrain the collection of a judgment recovered at law in this state by creditors of an insolvent corporation, nor against persons who have recovered judgments against the garnishees of such insolvent corporation under process of foreign attachment: *Stockbridge v. Beckwith*, 6 Del. Chan. 72.

In this case Chancellor Saulsbury in his opinion said: "A receiver is an officer of the court appointing him. He is appointed for the benefit of all parties who may establish rights in the cause. The money in his hands is in custodia legis for whoever can make out a title to it. It is the court itself which has the care of the property in dispute.

"The receiver is but the creature of the court. He has no powers except such as are conferred upon him by the order of his appointment, and the cause and practice of the court. A receiver's right to the possession of the debtor's property is limited to the jurisdiction of his appointment; and he has no lien upon the property of the debtor except for that which he may get the possession of without suit, or for that which after having been permitted to sue for, he may reduce into possession in that way."

"The authority of the chancellor to interpose and take from the directors the power to close up the business of the corporation, and place its affairs in charge of a receiver, is a discretionary power, to be exercised only on good cause shown—upon circumstances disclosed by the proof which show the need of the interference of the court for the protection of creditors or stockholders from breaches of trust by the directors in the performance of their duties:" *Newfoundland R. R. Construction Co. v. Schack*, 40 N. J. Eq. 222, 229; *Rawnsley v. Trenton Mut. Life Ins. Co.*, 9 N. J. Eq. 95, 347.

In *National Trust Co. v. Miller*, 33 N. J. Eq. 155, 158, it was said, in substance, that the receiver of a corporation was an officer created by law for the protection of the rights of the creditors of the corporation, and to accomplish the purposes of his creation it was indispensably necessary that he should be clothed with their attributes and equities. The receiver

is the representative of the creditors, and as such may, by suit or defence, avoid any instrument which is void as against them. As such representative he may sue stockholders at law for unpaid subscriptions: *Receiver v. Spielmann*, 50 N. J. Eq. 120, 796; *Hopper v. Lovejoy*, 47 N. J. Eq. 573; *Natl. Trust Co. v. Miller*, 33 N. J. Eq. 155, 158; *Hood v. McNaughton*, 54 N. J. Law, 425; *Barkalow v. Totten*, 53 N. J. Eq. 573; *Falk v. Whitman Cigar Co.*, 36 Atl. Rep. 1094.

By a prior statute of this state, 19 Del. Laws, chapter 181, the chancellor is authorized on the application of creditors or stockholders to appoint a receiver to take charge of the estate, effects and business of an insolvent corporation, but this statute does not provide for the dissolution of a corporation.

#### **JURISDICTION OF CHANCELLOR.**

SECTION 38. The chancellor shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

#### **DUTIES OF TRUSTEES OR RECEIVERS.**

SECTION 39. The said trustees or receivers after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of such debts and necessary expenses, they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation, or their legal representatives.

#### **SURRENDER BEFORE BEGINNING BUSINESS.**

SECTION 40. Before the payment of any part of the capital and before beginning business for which the corporation was created, the incorporators named in any certificate of incorpo-

ration may surrender all their corporate rights and franchises, by filing in the office of the secretary of state a certificate, verified by the oath or affirmation of a majority of the incorporators named in any certificate of incorporation that no part of the capital has been paid and such business has not been begun, and surrender all rights and franchises, and thereupon the said corporation shall be dissolved.

As this section gives the *incorporators named in the certificate* the power to surrender all their corporate rights and franchises, it is better practice to have all the incorporators named make oath or affirmation to the certificate to be filed in the office of the secretary of state.

#### **NO ABATEMENT OF ACTION.**

SECTION 41. If any corporation organized under this act becomes dissolved by the expiration of its charter or otherwise, before final judgment obtained in any action pending or commenced in any court of record of this state, against any such corporation, the said action shall not abate by reason thereof, but the dissolution of said corporation being suggested upon the record, and the names of the trustees or receivers of said corporation being entered upon the record, and notice thereof served upon said trustees or receivers, or if such service be impracticable upon the counsel of record in such case, the said action shall proceed to final judgment against the said trustees or receivers by the name of the corporation.

#### **FILING OF DECREE OR JUDGMENT.**

SECTION 42. Whenever any corporation is dissolved or its charter forfeited by decree or judgment of the court of chancery, the said decree or judgment shall be forthwith filed by the register in chancery of the county in which such decree or judgment shall be entered, in the office of secretary of state, and a note thereof shall be made by the secretary of state on the charter or certificate of incorporation, and on the

index thereof, and be published by him in the next volume of laws, which he shall cause to be published.

### SERVICE OF LEGAL PROCESS.

SECTION 43. Service of legal process upon any corporation created under this act shall be made by delivering a copy thereof personally to the president of such corporation, or by leaving the same at his dwelling-house or usual place of abode. If the president resides out of the state service thereof may be made by delivering a copy thereof to the secretary or one of the directors of said corporation, or by leaving the same at the dwelling house or usual place of abode of such secretary or director, or at the principal office or place of business of the corporation in this state. Service by copy left at the dwelling-house or usual place of abode, or at the said principal office or place of business in this state to be effective must be delivered thereat at least six days before the return of the process, and in the presence of an adult person; and the officer serving the process shall distinctly state the manner of service in his return thereto; provided, that process returnable forthwith must be served personally.

This section prescribes the manner in which a *summons* may be served, and has no application beyond the first process in the cause. As to subsequent process "everything must depend upon the circumstances of each particular case, having regard to the purposes for which the corporation was created, and the nature of the duties of the person on whom service is made, either in his official capacity, or by the usages of the company. The principle is, that it must be made upon some person upon whom the duty devolves by virtue of his official position, or of his employment, to communicate the fact of service to the governing power in the corporation. A service on such a person is a service on the corporation:" Dock v. Elizabethtown Steam Mfg. Co., 34 N. J. Law, 312, 318; Facts Pub. Co. v. Felton, 52 N. J. Law, 161. But see Norton v. Berlin Iron Bridge Co., 51 N. J. Law, 442.

Nor will a judgment recovered in a court of another state, by the record of which it appeared that the defendants in it resided at the time out of the state and had never been served with process in the suit, nor voluntarily appeared to it, be considered by the courts in this state to constitute at common law sufficient *prima facie* evidence of a legal in-

debtedness on the part of the defendants to the plaintiff in it, to entitle the latter to recover here upon it in an action of debt, as well as in an action of indebitatus assumpsit on the judgment, independent of the provision of the constitution and the act of congress before referred to: *Mitchell Vance & Co. v. Ferris & Co.*, 5 Houst. 34.

For general statutory provisions respecting service of process upon corporations see Revised Code, p. 567.

### **LIABILITY OF OFFICERS AND STOCKHOLDERS.**

SECTION 44. When the officers, directors or stockholders of any corporation, organized under this act, shall be liable by the provisions of this act, to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action on the case against any one or more of them and the declaration shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally; or the person to whom they are liable may have his remedy by bill in chancery.

See section 7, subd. 10. Also section 14, ante, and notes.

Sections 44 and 46 relate to cases where officers, directors or stockholders are made specifically liable by the provisions of the act for the payment of the debts of the company, and provide in such cases for actions by the creditor. They do not relate to actions against stockholders to enforce payment of subscriptions for stock.

The statutory liability of stockholders in foreign corporations for debts of the corporation cannot be enforced except at the domicile of the corporation, when the law of the domicile provides the remedy: *Marshall v. Sherman*, 148 N. Y. 9; reversing 84 Hun. 186.

In New Jersey it is held that equity proceedings under sections 92 and 94 of the New Jersey law (which correspond with sections 44 and 46 of the Delaware law) must be by general creditors' bill for the benefit of all creditors: *Wetherbee v. Baker*, 35 N. J. Eq. 501, 505.

### **REMEDY AGAINST CORPORATION FOR DEBTS PAID.**

SECTION 45. When any officer, director or stockholder shall pay any debt of a corporation for which he is made liable by the provisions of this act, he may recover the amount so paid, in an action against the corporation for money paid

for its use, and in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.

### **DIRECTOR OR STOCKHOLDER'S LIABILITY SECONDARY.**

SECTION 46. No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of a corporation organized as aforesaid, of which he is such director or stockholder until judgment be obtained therefor against such corporation and execution thereon returned unsatisfied, but any suit brought against any director or stockholder for such debts shall be stayed, after execution levied, or other proceedings to acquire lien, until such return shall have been made.

In order to be entitled to a recovery from a stockholder, the issuance and return unsatisfied of an execution on the judgment which is the foundation of the suit, must be shown: *Terry v. Rothschild*, 83 Hun, 486. In *Handy v. Draper*, 89 N. Y. 337, the corporation is treated as the primary debtor and the liability of the stockholder is ultimate and subsidiary.

### **RECEIVERS OR TRUSTEES MUST FILE INVENTORY.**

SECTION 47. Receivers or trustees shall, as soon as convenient, file in the office of the register in chancery of the county in which the corporation's principal place of business is a full and complete inventory of all the estate, property and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and make a report to the court of their proceedings, whenever and as often as the court shall direct.

By the New Jersey act receivers are required to make a report of their proceedings to the court of chancery every six months during the continuance of the trust (section 74, "Act concerning Corp."). In Delaware no regular time is specified for filing reports.



**PROOF OF CLAIMS AGAINST CORPORATIONS.**

SECTION 48. All creditors shall make proof under oath of their respective claims against the corporation, and cause the same to be filed in the office of the register in chancery of the county in which the corporation's principal place of business is, within six months from the date of the appointment of a receiver or trustee for such corporation, or sooner if the court shall order and direct, and all creditors and claimants failing to do so, within the time limited by this act, or the time prescribed by the order of the court may, by direction of the court be barred from participating in the distribution of the assets of the corporation; the court may also prescribe what notice, by publication or otherwise, shall be given to creditors of the time fixed for the filing and making proof of said claim.

Section 34 provides that upon dissolution of a corporation the president and directors shall be the trustees of said corporation with full power to collect the assets, pay the debts and settle the affairs generally of a corporation, which power is liable to be superseded by order of the court of chancery at the suit of a creditor or stockholder, in accordance with section 37, ante. It would therefore seem that the limitation as to time of filing claims under the above section (48) is applicable only when such appointment has been made by the court.

**ADJUSTMENT OF CLAIMS.**

SECTION 49. It shall be the duty of the register in chancery, immediately upon the expiration of the time fixed for the filing of claims, in compliance with the provisions of the preceding section of this act, to notify the receiver or trustee of the filing of said claims, and it shall be the duty of said receiver or trustee within thirty days after receiving said notice, to inspect said claims, and if said trustee or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, said receiver or trustee shall forthwith notify the creditors, whose claims are disputed, of his decision; the said receiver or trustee shall require all creditors whose claims are disputed to submit themselves to such examination in re-

lation to their claims as the receiver or trustee shall direct, and such creditors shall produce such books and papers relating to their claims as shall be required; and the receiver or trustee shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

Provided, however, that every creditor or claimant, when he shall have received notice from said receiver or trustee, that he is not satisfied with the said claim as filed in the office of the register in chancery, shall have the right, within ten days thereafter, to demand that the said receiver or trustee shall certify the said claim to the court of chancery, which court shall have jurisdiction to pass upon the said claim as presented, and to determine the rights of the claimant, and to make such order or decree touching the same as shall be equitable and just; and provided, further, that when any creditor or claimant shall submit himself to such examination in relation to his claim, as the receiver or trustee shall direct, and the receiver or trustee shall pass upon and allow or disallow such claim, the creditor or claimant so submitting himself, or any other creditor or claimant, shall have the right of appeal to the court of chancery, which court shall hear and determine the rights of the claimant, and shall make such order or decree touching the same as shall be equitable and just.

See note, section 48, ante.

These provisions would seem to give the court power to consider and determine every question brought before the receiver for their action, and by which action any creditor could complain of being aggrieved: *Jackson v. People's Bank*, 9 N. J. Eq. 205.

In *Leo v. Green*, 52 N. J. Eq. 1, the chancellor held that a delay for eight years in appealing from a receiver's disallowance of a claim, where repeated notices had been given of an order limiting appeals, was a bar to any relief.

Where there is the same receiver for two corporations, one of which, as part of its assets, owns stock in the other, a creditor of the one may

appeal from an allowance of a claim against the other: *Blake v. Domestic Mfg. Co.*, 38 Atl. Rep. 241.

### **RECEIVER TO BE MADE A PARTY TO SUITS.**

SECTION 50. A receiver shall, upon application by him in the court in which any suit is pending, be substituted as party plaintiff or complainant in the place and stead of the corporation in any suit or proceeding at law or in equity which was so pending at the time of his appointment; and no action against a receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor or against the corporation in case no new receiver is appointed.

### **SALE OF PERISHABLE OR DETERIORATING PROPERTY.**

SECTION 51. Whenever the property of an insolvent corporation is at the time of the appointment of a receiver or trustee encumbered with liens of any character, and the validity, extent or legality of any such lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting such lien, the court of chancery may order the receiver or trustee to sell the property of the corporation, clear of all incumbrances, at public or private sale for the best price that can be obtained therefor, and pay the net proceeds arising from the sale thereof after deducting the costs of such sale into the court, there to remain subject to the order of the said court, and to be disposed of as the court shall direct.

This act is remedial in its nature, and should receive a liberal construction. The object of the legislature was the prevention of loss by the depreciation in value of the property, pending protracted litigation. The mischief and the remedy proposed are plainly apparent upon the face of the act. It was not intended to confine the remedy to mischief arising from litigation of any particular character, but to all litigations between incumbrances respecting the validity, extent or priority of their liens. The act must be so construed as to suppress the mischief and advance the remedy: *Randolph v. Larned*, 27 N. J. Eq. 557, 560.

**LIEN OF EMPLOYÉS.**

SECTION 52. Whenever any corporation, formed under the provisions of this act, shall become insolvent, the employés doing labor or service of whatever character in the regular employ of such corporation, shall have a lien upon the assets thereof for the amount of the wages due to them, not exceeding two months' wages respectively, which shall be paid prior to any other debt or debts of said corporation; but the word "employés" shall not be construed to include any of the officers of such corporation.

In *Consolidated Coal Co. v. Keystone Chemical Co.*, 54 N. J. Eq. 309, it was held that a bookkeeper, although a director, in the regular employ of the corporation, was entitled to the lien given by the statute.

The president is not entitled to a lien for services as president; he is a member of the corporation and cannot be both employer and employé. The word laborers includes "all persons doing labor or service of whatever character for or as workmen or employés in the regular employ of such corporation:" *England's Executors v. Beatty Organ Co.*, 41 N. J. Eq. 470.

In *Fitzgerald v. Maxim Powder Mfg. Co.*, 35 Atl. Rep. 1064, the word "assets" was construed to include the entire assets or property of the corporation which came to the receiver for administration, whether incumbered by previous liens or not, with certain exceptions. It was held, therefore, that the lien of laborers was prior to the lien of a judgment entered before the insolvency of the company.

The right of preference is statutory and does not vest until the happening of the statutory requirements. It is created only when insolvency proceedings are begun and then arises in favor of those persons and for such amounts and under such conditions as the legislation on the subject then in force may prescribe. The law recognizes no distinction between apprentices and other employés: *Mingin v. Alva Glass Mfg. Co.*, 37 Atl. 458.

This section being in derogation of the common right of creditors of the same class to be paid equally must be construed strictly. And the right conferred by it is held to be personal, inhering in the person alone who actually performs labor or services: *Lehigh Coal & Nav. Co. v. C. R. R. of N. J.*, 29 N. J. Eq. 252.

A contractor cannot have the benefit of the act: *Ib.*

Where A entered into agreement with a corporation to serve it for a term of years at a fixed salary, and before the term expired the corporation became insolvent and a receiver was appointed, A is entitled to damages for breach of contract, but his claim for the amount of such damages is not preferred: *Spader v. Mural Dec. Co.*, 47 N. J. Eq. 18.

**COMPENSATION OF RECEIVERS.**

SECTION 53. The court of chancery, shall before making distribution of the assets of an insolvent corporation, among the creditors or stockholders thereof, allow a reasonable compensation to the receiver or trustee for his services, and the costs and expenses incurred in and about the execution of his trust, and the costs of the proceedings in said court, to be first paid out of said assets.

**CONSOLIDATION OF CORPORATIONS.**

SECTION 54. Any two or more corporations organized under the provisions of this act, or existing under the laws of this state, for the purpose of carrying on any kind of business of the same or a similar nature, may consolidate into a single corporation which may be either one of said consolidating corporations, or a new corporation to be formed by means of such consolidation; the directors or a majority of them, of such corporations as desire to consolidate, may enter into an agreement signed by them, and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in articles of incorporation, as provided in this act, as well as the manner of converting the shares of each of the old corporations into the new, with such other details and provisions as are deemed necessary.

Written notice of the time and place of a meeting to consider the purpose of entering into such an agreement, shall be mailed to the last known post-office address of each stockholder of each corporation, at least twenty days prior to the time of such meeting, and such notice shall be published at least two weeks in some newspaper printed and circulated in the county of the principal place of business of each corporation, and the written consent of the owners of at least two-thirds of the capital stock of each corporation shall be necessary to the validity and adoption of such an agreement; that

fact shall be certified thereon by the secretary of each of the respective corporations, under the seal thereof, and the agreement, so adopted and so certified and acknowledged as herein provided for original certificates of incorporation, and filed and a certified copy thereof recorded in the same manner as certificates of incorporation are required to be; said certificate, or a copy thereof duly certified by the secretary of state, shall be evidence in all courts of law and equity in this state.

It is not against public policy for two corporations engaged in the same general line of business to consolidate: *Cameron v. N. Y. & Mt. V. Water Co.*, 62 Hun, 269; affirmed on other grounds, 133 N. Y. 336; *Holmes & Griggs Mfg. Co. v. Holmes & W. M. Co.*, 127 N. Y. 252.

A contract between two corporations is not vitiated by the fact that some of the officers were directors in both corporations, in the absence of fraud or bad faith on their part: *Genesee Valley & Wyoming Ry. Co. v. Retsof Mining Co.*, 15 Misc. 187.

#### **NATURE OF CONSOLIDATED CORPORATIONS.**

SECTION 55. When the agreement is signed, acknowledged, filed and recorded, as in the preceding section is required, the separate existence of the constituent corporations shall cease, and the consolidated corporations shall become a single corporation in accordance with the said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of

this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act; provided, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

The existence of the old corporations is upon the merger terminated, and their stockholders become, ipso facto, such shareholders of the new corporation as will qualify them to be elected directors: *Camden Safe, etc., Co. v. Burlington Carpet Co.*, 33 Atl. Rep. 480. For discussion and construction of these provisions for merger, see *Trenton Pass. R. R. v. Wilson*, 37 Atl. Rep. 476.

#### **PAYMENT FOR STOCK OF DISSATISFIED STOCKHOLDERS.**

SECTION 56. If any stockholder in either corporation consolidating as aforesaid, who objected thereto in writing, shall within twenty days after the agreement of consolidation has been filed and recorded, as aforesaid, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall, within three months thereafter, pay to him the value of the stock at the date of consolidation; in case of disagreement as to the value thereof, it shall be ascertained by three disinterested persons, one of whom shall be chosen by the stockholder, one by the directors of the consolidated corporation and the other by the two selected as aforesaid; and in case the said award is not paid within sixty days from the making thereof, and notice thereof given to said stockholder and said consolidated corporation, the amount of the award shall be evidence of the amount due by said corporation, and may be collected as other debts are by law collectible; on receiving payment of the award, said stockholder shall transfer his stock to the said consolidated corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders.

**ACTION AGAINST CONSOLIDATING CORPORATION.**

SECTION 57. Any action or proceeding pending by or against either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place, or the new corporation may be substituted in its place.

**LIABILITY OF CORPORATIONS.**

SECTION 58. The liability of corporations created under this act, or existing under the laws of this state, or the stockholders or officers thereof, or the right or remedies of the creditors thereof, or of persons doing or transacting business with such corporation, shall not in any way be lessened or impaired by the sale thereof, or by the increase or decrease in the capital stock of any such corporation, or by the consolidation of two or more corporations, or by any change or amendment in the articles of incorporation.

**AUTHORITY OF CONSOLIDATED CORPORATION TO ISSUE BONDS AND STOCK.**

SECTION 59. When two or more corporations are consolidated, the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make, or obligations it will be required to assume, in order to effect such consolidation; to secure the payment of which bonds and obligations it shall be lawful to mortgage its corporate franchise, rights, privileges and property, real, personal and mixed; and may issue capital stock, to such an amount as may be necessary, to the stockholders of such consolidated corporation in exchange or payment for the original shares, in the manner and on the terms specified in the agreement of consolidation.

Consolidated company may mortgage property to pay off debts of old companies though there is no provision in consolidation agreement rela-



tive to such debts: *Camden, etc., Co. v. Burlington Carpet Co.*, 33 Atl. Rep. 479.

### SALE OF FRANCHISE.

SECTION 60. If the franchise and property of any corporation formed under the provision of this act, or existing under the laws of this state is sold, the persons who may become the purchasers, at private sale or under the judgment of the court, may organize a corporation for the continuation, operation and management of the same; and such corporation, when organized, shall have the same rights, privileges and franchises as have been granted to, or acquired by the corporation purchased; and shall be subject to all the limitations, restrictions and liabilities imposed upon it; and, in addition thereto, shall be subject to all the provisions of this act. Such corporation shall be formed by articles of incorporation executed by the purchaser and his associates, and which shall, in addition to the requirements of the provisions of this act, set forth the description of the property sold and the decree under which the sale was made; if it was sold under judgment, or if not, the deed conveying the property; the amount paid or to be paid, and to whom and by whom, and such other statements as may be deemed necessary. The article shall be signed by the purchaser and his associates, if any, and shall be filed in the office of the secretary of state, who shall furnish a certified copy of the same under his hand and seal of office, which shall be recorded as hereinbefore provided for certificates of incorporation; and when a certificate of such fact is delivered to the purchaser the corporation shall be deemed to be organized, and shall have all the rights, powers and privileges, and be subject to all restrictions, limitations and liabilities of other similar corporations organized under this act.

Any number of persons may purchase the property for themselves and organize a new corporation, which will possess all the powers, rights, privileges and franchises of the prior corporation: *Vatable v. N. Y., L. E. & W. R. R. Co.*, 96 N. Y. 49; see also *Pratt v. Munson*, 84 N. Y. 582; *Thornton v. Wabash Ry. Co.*, 81 N. Y. 462.

**PROVISIONS RELATING TO SALES OF FRANCHISES.**

SECTION 61. Sales of the property and franchises of such corporations that may be sold under a decree of court shall be made after such notice of the time and place as the court may deem proper; and if such sales are made in the foreclosure of one or more mortgages, the court may order such sale to be made for the whole amount of the outstanding bonds and interest secured by such mortgage or mortgages or if the property and franchise will produce so much, then for the amount of interest due under said mortgage or mortgages, subject to the payment by the purchaser of the outstanding bonds and interest secured thereby as they become due; and in the latter event may, by proper orders, secure the assumption thereof by the purchaser; but when a sale shall be ordered to be made, subject as aforesaid, the court shall direct the officer making such sale, in the event that the property and franchises offered do not sell for enough to pay the amount aforesaid, to sell the same free from incumbrances. Sales under this section shall be made on such credits as the court may deem proper.

The rights of each of the stockholders of the prior corporation will be cut off by the foreclosure and sale. The only property interest left to him is in the surplus, if any, after satisfying the mortgage and other preferential claims: *Vatable v. N. Y., L. E. & W. R. R. Co.*, 96 N. Y. 49.

When the plan for readjustment of interests has been embodied in the certificate filed for the organization of the new corporation it constitutes notice to stockholders of the general features of such plan: *Ib.*

**FORFEITURE OF CHARTER FOR FAILURE TO COMMENCE BUSINESS.**

SECTION 62. Any corporation organized under this act shall forfeit all rights, privileges and franchises obtained thereunder, if it shall fail, for two years after its organization, to commence in good faith the business, or to promote the objects or purposes for which it was organized.

See section 2, subd. 7, and notes, ante.

This section and sections 10, 11 and 12 of an Act to Raise

Revenue (post), are the only provisions of the legislature for the forfeiture or revocation of corporate charters.

For the abuse or misuse of corporate powers, privileges or franchises, or even the non-user thereof after once having exercised said powers, there is at present no statute providing for the revocation or forfeiture of corporate charters.

It may even be questioned whether charters can be forfeited for failure of a corporation to begin business within the stated two years, since the mode of enforcing this section is not as yet prescribed as is required by article IX, section 1, of the constitution.

The above section cannot possibly be self-executing under the constitution.

#### **WANT OF LEGAL ORGANIZATION NO DEFENCE IN ACTIONS.**

SECTION 63. No corporation organized under this act or existing under the laws of this state, shall be permitted to set up, or rely upon the want of legal organization as a defence to any action against it; nor shall any person transacting business with such corporation, or sued for injury done to its property, be permitted to rely upon such want of legal organization as a defence.

This section shall not be construed to prevent judicial inquiry into the regularity or validity of the organization of the corporation or its lawful possession of any corporate power it may undertake to assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain such challenge shall be admissible in any such suit or proceeding.

See also section 12, ante, and notes.

The effect of this section seems to be to prevent a collateral inquiry into the legality of corporate organizations; such inquiry can only be made by the attorney-general in proceedings instituted especially for that purpose: *Stout v. Zulick*, 48 N. J. Law, 599.

In an action for goods sold to a corporation, the latter cannot show, under a general denial, that it was not incorporated at the time of the sale alleged: *Schmidt v. Nelke Art Lithographic Co.*, 17 Misc. 124; reversing 16 Misc. 300.

A party who has entered into a contract with another, in which the latter assumes to be and contracts as a corporation, is estopped from denying the corporate existence: *U. S. Vinegar Co. v. Schlegel*, 143 N. Y. 537.

An indictment for the larceny of the property of a corporation need not allege that it was a corporation of the state at the time of the alleged offense: *State v. Fitzpatrick et al.*, 32 Atl. Rep. 1072.

#### **NAME TO BE DISPLAYED ON PRINCIPAL OFFICE.**

SECTION 64. Every corporation organized under this act, shall in a conspicuous place, on its principal place or places of business, in letters sufficiently large to be easily read, have painted or printed the corporate name of such corporation, and immediately under the same, in like manner, shall be printed or painted the word "Incorporated." And immediately under the name of such corporation, upon all printed or advertising matter used by such corporation, shall appear in letters sufficiently large to be easily read the word "Incorporated." And such corporation which shall fail or refuse to comply with the provisions of this section shall be subject to a fine of not less than one hundred dollars, and not more than five hundred dollars, to be recovered with costs by the state, before any court of competent jurisdiction, by action at law to be prosecuted by the attorney-general.

It would be safer to follow the statute literally and use the word "Incorporated," without additions, when its use is required by the statute.

#### **ISSUING NEW CERTIFICATES OF STOCK FOR THOSE LOST OR DESTROYED.**

SECTION 65. Every corporation organized under this act, may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors may, in their discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, not exceeding double the value of the stock, to indemnify the corporation against any claim that may be

made against it on account of the alleged loss of any such certificate; a new certificate may be issued without requiring any bond when, in the judgment of the directors it is proper so to do, and when any such corporation shall have refused to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate or his legal representatives, may apply to the superior court of the state of Delaware in and for the county in which the principal office of the corporation is located for an order requiring the corporation to show cause why it should not issue a new certificate of stock in place of the one so lost or destroyed: such application shall be by petition duly verified, in which shall be stated the name of the corporation, the number and date of certificate, if known or ascertainable by the petitioner, the number of shares of stock named therein and to whom issued, and a statement of the circumstances attending such loss or destruction: thereupon such court shall make an order requiring the corporation to show cause at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition; a copy of the petition or order shall be served upon the president or other head officer of the corporation, or on the cashier, secretary, treasurer or any director thereof personally or left at the principal office or place of business of the corporation in this state at least five days before the time designated in the order.

The title of the true owner of a lost or stolen certificate of stock may be asserted against any one subsequently obtaining its possession, although the holder may be a bona fide purchaser: *Knox v. Eden Musee Co.*, 148 N. Y. 441.

#### **PROCEEDINGS ON LOSS OR DESTRUCTION OF CERTIFICATE.**

SECTION 66. At the time and place specified in the order, and on proof of service thereof, the court shall proceed to hear the proofs and allegations in behalf of the parties in interest,

relative to the subject-matter of inquiry, and if upon such hearing the court shall be satisfied that the petitioner is the lawful owner of the number of shares of capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed and cannot be found, and no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares of the capital stock of the corporation, which shall be specified in the order as owned by the petitioner, and the certificate for which shall have been lost or destroyed; in making the order the court shall direct that the petitioner file such bond in such form and with such security as to the court shall appear sufficient to indemnify any person who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; any person who shall thereafter claim any rights under the certificate so lost or destroyed, shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order of court; and obedience to said order may be enforced by the court by attachment against the officers of the corporation, on proof of their refusal to comply with the same.

Trover will lie for a corporate certificate of stock in an incorporated company, if the absolute ownership of the property is in the plaintiff, and he has an unqualified right to the possession of it when demanded of and refused by the defendant. And the measure of the damages for the conversion of it will be the value of the shares of stock represented in it at the time of such demand and refusal: *Stewart v. Bright*, 6 Houst. 344.

#### **DRAINAGE AND RECLAMATION OF LOW LANDS.**

SECTION 67. Every corporation organized under this act, for the drainage or reclamation of low lands, shall, in addition to the other powers conferred by this act, have power, for the purpose of reclamation of low lands by ditching, draining and bringing them into cultivation, to enter upon

any lands that, in the opinion of the directors or managers, will be benefited by the operations to be performed by the corporation, and with their workmen, laborers, teams, agents and employés, to cut and make, and when made, from time to time, to clean out, remove all obstructions and thoroughly cleanse all such ditches or drains as in the opinion of such directors or managers shall be necessary for effectually draining and reclaiming the said lands. Before proceeding to accomplish the ends of its incorporation, the said corporation shall apply to the superior court of the state of Delaware, in and for the county in which the low lands, desired to be drained, or the greater part thereof, may be located, for the appointment of commissioners to go upon the lands, through, along or across which the ditch or ditches of the said corporation are proposed to be cut, and view the same and determine whether any and which of them will be benefited by the same, and to make a return of their proceedings in the premises to the said superior court, with a survey and plot of the proposed ditches, showing their course, and the lands, by general designation, through, along and across which they will run and to be benefited thereby and the probable costs of making the improvements. They shall also return a valuation of the several parcels of land to be benefited by such improvements. Should there be upon the lines of the corporation's works any lands through, along and across which the ditch or ditches are to be made that will be injured by the making of them, they shall estimate such damage in money and the same shall be paid to the owner, or, in case of his refusal to receive it, or absence from the state, or inability by reason of legal disability, it shall be deposited to his credit in the Farmers' Bank, or that branch thereof at the county seat, in which the lands are located, before the company shall have any right to construct or make their works through such land.

The return of the commissioners upon being confirmed by the said superior court, shall be final and conclusive upon all

parties, and shall be the basis upon which the taxes of the corporation are to be laid. Said return of the commissioners, together with the survey, and plot, being approved by the said superior court, shall be, by the prothonotary, forthwith delivered to the recorder of deeds of the county in which the proceedings are instituted to be by him recorded in a book to be procured for the purpose. The said valuation thus approved by the said court shall continue until a majority of the taxables or those liable to pay the said taxes demand a new one, proceedings from which shall be taken in the said court by petition, and the prayer of the petitioner granted, if in the opinion of the court such new valuation is proper to be made at the time; and said new valuation, if any is ordered to be made, shall be returned to the court, and being approved, shall be, by the prothonotary, forthwith delivered to the recorder of the county, to be by him recorded in the same manner as is provided for the recording of the original proceedings.

Exceptions to the returns of commissioners hereinbefore provided for may be made by any person aggrieved thereby, and said exception shall be heard and determined under such rules and regulations as the court shall adopt for that purpose. Before any commissioners appointed under this section proceed to act they shall be sworn or affirmed by one of their own members, or other persons authorized by law to administer oaths, to perform the duties required of them with fidelity, which qualification must be certified upon their return. When record is made of the return, together with the survey and plot, where the survey and plot is a part of the return, the original shall be delivered over to the corporation, and it or the record thereof, or any certified office copy of the latter shall be evidence. The commissioners shall each be paid by the corporation two dollars for each day employed under this act, and the surveyor, for his survey and plot (including a fee of one dollar and fifty cents each day to the chain carriers) such sum as the commissioners may deem



just, and tax the same upon the return; and this money shall be paid before the commissioners shall be required to make any return. The fees of the prothonotary and all costs incurred in any and all proceedings had in this behalf in the superior court, shall be paid to the prothonotary by the corporation, before he shall be required to deliver the returns, surveys and plots or any of them to the recorder of deeds as hereinbefore provided; and the fees of the recorder shall also be paid to him at the time of the delivery to him of the said return, survey and plot. Whatever money the corporation may deem necessary to raise for cutting the ditch or ditches (including the expenses in this section provided for), and for keeping the same open and in repair, shall from time to time, as the exigency may require, be collected by the taxation of the taxables, according to the nature of their property to be benefited; to provide for which the managers shall make an estimate of the money to be raised and apportion it among the said taxables; and they shall at once give notice, under their hands, of a meeting, of said taxables, to be held on a day therein to be named, and at some convenient place, and between ten o'clock of the forenoon and four o'clock of the afternoon, of said day, to consider the said apportionment. At said meeting any taxable shall have the right to be present and object to the justice of the same in his case. The manager shall, at the close of the meeting (which shall be kept open at least three hours), reconsider their apportionment and alter the same, if they deem it just and expedient so to do. Such reconsideration shall be final, and then they shall make a copy of the apportionment under their hands, and deliver the same to the treasurer; and when the company orders money to be collected for its necessary purposes, the treasurer shall, upon receiving their warrant in writing, proceed to collect the same, from the respective taxables, according to such apportionment, and for that purpose shall have all the powers of a collector of county taxes. The apportionment shall continue until a new apportionment shall be made

by the managers and approved at a meeting of taxables, called for the consideration thereof, which meeting shall be called in the same manner and kept open for the same time as is provided for the first apportionment, and made after the managers shall have reconsidered their apportionment and altered the same, if they shall deem it expedient so to do, and taxes may, from time to time, be collected, according to it, as the needs of the company may require. Orders for collections, however, shall only be valid when made by the corporation at an annual meeting.

In case of private owners of a ditch or ditches not within the corporation's limits, but the waters collected in which can be discharged into the ditches of the corporation, such private owners may be allowed to connect with the ditch or ditches of the corporation on such terms as may be agreed upon, and may thenceforth become constituent members of the corporation, with the rights of such members, and subject as to themselves and their lands drained by such private ditch or ditches, to all the burdens and responsibilities of other members of the corporation; and the managers shall, at once, add their lands to the other lands within the corporation's operations, and apportion their share of the taxes among them as above provided with respect to original taxables. The managers shall take account of all changes of ownership of lands within the corporation's limits from whatever cause, and substitute the names of the new owners or taxables in lieu of the old ones upon their original apportionment, from which they shall be transferred to the copy in the hands of the treasurer, and when transferred the new taxables shall stand in the place of the old, in all respects as if they had been original owners or taxables. Such corporations as are provided for in this section shall set forth the name of the hundred or hundreds in which their operations are to extend, in the certificate of their incorporation. All the provisions of section 7, chapter 59, Revised Code, as amended, etc., A. D. 1893, shall be applicable to all corporations created under the

provisions of this act for the drainage or reclamation of low lands.

### **BUILDING AND LOAN ASSOCIATIONS.**

SECTION 68. Building and loan associations organized under this act shall, in addition to the other powers herein granted, have power to sell their accumulated funds to and among their stockholders at any premium which may be obtained for the same, and when such funds cannot be loaned to any stockholder at par they may be loaned to any person not a stockholder at any rate of interest not exceeding six per cent.

### **RAILROADS. FORMATION.**

SECTION 69. Any number of persons, not less than nine, may form a corporation under the provisions of this act, which corporation so formed as aforesaid shall have perpetual succession, for the purpose of constructing, maintaining and operating a railroad for the transportation of freight and passengers, and shall do and perform the several matters and things hereinafter stated, and shall have and exercise all the rights, powers and privileges hereinbefore and hereafter conferred and be subject to all the duties, limitations, restrictions and liabilities hereinafter imposed upon such corporation; and for that purpose may make and sign articles of association in lieu of the articles of association hereinbefore required by the provisions of this act, in which shall be stated:

1. The name of the corporation.
2. The place from which and to which such railroad is to be constructed, maintained and operated.
3. The estimated length of such railroad, and the name of each county in this state through or into which it is intended to be made.
4. The amount of the capital stock of the corporation, which shall not be less than five thousand dollars for every mile of road proposed to be constructed.
5. The number of shares of which said capital stock shall consist.

6. The names and places of residence of nine directors of the corporation, who shall manage its affairs for the first year and until others are chosen in their places; and each such person shall subscribe thereto his name, place of residence and the number of shares of stock he agrees to take in such corporation; at least one of said directors shall be a resident of this state.

7. The name of the city, town, county or place within the county in this state in which its principal office or place of business will be located in this state.

### **APPROVAL OF JUDGE, FILING, ETC.**

SECTION 70. Said articles of association shall be presented to one of the judges of the superior court of the state of Delaware, who shall examine the same, and if found to conform to the requirements of this act, shall endorse his certificate thereon accordingly. On compliance with the foregoing provisions and the requirements of the next succeeding section, which latter shall be evidenced by the receipt of the state treasurer delivered to the secretary of state, such articles of association may be filed in the office of the secretary of state, who shall endorse thereon in writing the day they are filed, and record the same in a book to be provided by him for that purpose; and upon tendering the said articles to the secretary of state to be filed, the persons who have so subscribed such articles of incorporation and all persons who shall become stockholders in such corporation, shall be a corporation by the name specified therein; every such corporation formed under this act, in addition to the general powers hereinbefore in this act set forth shall have power:

### **ADDITIONAL POWERS.**

1. To have authority, by its officers and servants, to enter upon the lands or waters of any person or persons, which may be necessary, to make such examination and surveys for its proposed railroad as shall be required to be made, in the

selection of the most advantageous route, but subject at all times to responsibility for all and any damage which shall be done to the property of any such person or persons.

2. To aid in the construction, maintenance and accommodation of its railroad, may take and hold such voluntary grants of real estate and other property as shall be made to it, but in all instances, the real estate received as a voluntary grant shall be held and used for the purpose of such grant only.

3. For the sole purpose of the construction and maintenance of its railroad, and the stations and other accommodations necessary to accomplish the object of its incorporation, it may purchase, hold and use all such real estate or other property as may be necessary.

4. To construct its road and lay out the same as herein provided and for the purpose of cuttings and embankments, to take as much more land as may be necessary or required, for the proper construction and security of the road.

5. To use and exercise all other rights and powers herein granted.

#### **REQUIRED CAPITAL STOCK.**

SECTION 71. Articles of association, in compliance with the provisions of sections 69 and 70 of this act, shall not be filed and recorded in the office of the secretary of state until at least two thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto and paid, in good faith and in cash, to the directors named in said articles of association, nor until the said directors shall have deposited the said money so subscribed and paid to them with the state treasurer, who is constituted the custodian of the same, and shall hold the same, subject to be repaid to the directors of the said corporation, or to the treasurer thereof, in sums of two thousand dollars for each mile of said railroad, upon the construction of which it shall be proved to his satisfaction, that the said corporation has expended at least the sum of

two thousand dollars, nor until there is endorsed on such articles of association, or annexed thereto, an affidavit, made by at least five of the directors named in said articles of association, that the amount of stock required by this section has been, in good faith, subscribed and paid in cash as aforesaid, and that it is intended in good faith, to construct or maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association as aforesaid.

### **COPY OF CHARTER, EVIDENCE, ETC.**

SECTION 72. That a copy of any articles of association for the construction and operation of railroads, filed and recorded in pursuance of provisions of this act, or of the record thereof, with a copy of the affidavit aforesaid indorsed thereon or annexed thereto and duly certified to be a copy by the secretary of state, shall be presumptive evidence of the incorporation of such corporation and of the facts therein stated.

Nothing in this section contained shall prevent judicial inquiry into, and ascertainment of the existence of the corporation or the possession of the corporate powers it undertakes to assert in any suit or proceeding wherein the same shall be challenged.

### **SUBSCRIBING STOCK, TEN PER CENT. ON, REQUIRED PAID.**

SECTION 73. The directors named in said articles of association may, when such articles of association and affidavit are filed and recorded in the office of the secretary of state, in case the whole of the capital stock is not before subscribed, continue to receive subscriptions until the whole capital stock is subscribed; at the time of subscribing every subscriber shall pay to the directors ten per centum on the amount subscribed by him, in money, and no subscription shall be received or taken without such payment.

### **DIRECTORS.**

SECTION 74. That there shall be a board of not less than nine directors of every corporation formed under this act for the purpose of constructing and operating a railroad or railroads, to manage its affairs; said directors shall be chosen annually by a majority of the votes of the stockholders at such elections, and in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue to be directors until others are elected and qualified in their places; in the election of directors each stockholder shall be entitled to one vote for each share of stock held by him; vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation; the inspectors to hold the first election of directors shall be appointed by the board of directors named in the articles of association; no person shall be a director unless he shall be a stockholder, owning stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen; at every election of directors the books and papers of such company shall be exhibited to the meeting and subject to the inspection of those present, provided a majority of the stockholders present shall require it.

### **ORGANIZATION.**

SECTION 75. That within thirty days after the articles of association are filed in the office of the secretary of state the directors therein named shall organize by the election of one of their number president; they may also elect a treasurer and secretary and adopt such by-laws as may appear to be proper and right for the government of the corporation.

### **INCREASE OF CAPITAL STOCK.**

SECTION 76. That in case the capital stock of any company formed under this act, is found to be insufficient for constructing and operating its road, such company may, with the concurrence of two-thirds in amount of all its stockhold-

ers, increase its capital stock from time to time, to any amount required for the purpose of constructing, maintaining and operating its railroad; such increase may be sanctioned by a vote in person or by proxy, of two-thirds in amount of all the stockholders of the company, at a meeting of such stockholders called by the directors of the company for that purpose, by a notice in writing to each stockholder to be served on him personally, or by depositing the same, directed to him, in the post-office nearest his usual place of residence, at least twenty days prior to such meeting; such notice must state time and place of meeting, and its object and the amount to which it is proposed to increase the capital stock; the proceedings of such meeting must be entered on the minutes of the corporation, and thereupon the capital stock of the corporation may be increased to the amount sanctioned by a vote of two-thirds in amount of all stockholders of the corporation as aforesaid.

SECTION 77. That the stock of every company formed under this act shall be deemed personal estate and be transferable in the manner prescribed by the by-laws of the company, but no shares shall be transferable until all previous calls thereon shall have been paid.

#### **ASSESSMENT OF DAMAGES, CONDEMNATION PROCEEDINGS.**

SECTION 78. That whenever any corporation created under this act cannot agree with the owner or owners of any land, sand, earth, gravel or other materials necessary to be taken and used in the construction of the said railroad, for the purchase thereof, the said corporation may apply to the associate judge of the state of Delaware, resident in the county where the land and materials necessary to be taken are located, first giving the other party or owner at least five days' notice in writing of the intended application if within the state; and if said other party or owner be unknown or without the state, then such notice shall be published in some newspaper in the county in which the land proposed to be taken is located, at



least five days prior to the intended application, and the said associate judge shall appoint five judicious and impartial freeholders, to view the premises and assess the damages which the owner or owners will sustain by reason of the said railroad passing through, taking and using the same. The said freeholders shall be sworn or affirmed before some judge, justice of the peace or notary public, before entering on the premises, faithfully and impartially to perform the duties assigned them. They shall give ten days' notice, in writing, to the owner or owners of the premises or to their guardian or guardians, duly appointed according to law, if within the state and the same to the president of the corporation of the time of their meeting to view the premises; and the said commissioners shall certify their finding and award to both parties, but if either party is dissatisfied with the damages so assessed, such party may on application to the prothonotary of the superior court of the state of Delaware, in and for the county where the land lies, within thirty days after such assessment, sue out a writ of *ad quod damnum*, requiring the sheriff in the usual form to inquire of twelve impartial men of his bailiwick of the damages as aforesaid, and their report shall be final; the said commissioners shall in assessing the damages as aforesaid, award at least the actual cash value of the land, sand, earth, gravel or other materials so to be taken and used, as aforesaid, whereupon the corporation, upon paying the damages so assessed, shall become entitled to have, hold, use and enjoy the said lands and materials for the purposes by them required, forever; and in case any owner of lands necessary and taken for the purpose of construction of the said railroad, shall be a minor or a non-resident, or for any cause incapable of receiving, or unwilling or neglecting to receive said damages, or to call upon the said corporation, for the same, the said corporation may deposit the amount of the said damages to the credit of such owner or owners, in the Farmers' Bank in the county in which the said land and materials taken are located, subject to his, her or their order

whereupon the said corporation shall be entitled to have, hold, use and enjoy the said lands, premises and materials described and condemned in said report and required for the purposes of said corporation, for or on account of which said damages shall have been so assessed; the expenses of the assessment by the said commissioners of the damages aforesaid and the fees of the said sheriff, prothonotary and all costs incurred in the execution of the writ of *ad quod damnum*, shall in all cases be paid by the corporation.

### **WIDTH, SURVEYS, ETC.**

SECTION 79. That any railroad constructed under the provisions of this act shall not exceed sixty-six feet in width unless more land shall be required for the slopes of cuts and embankments, with as many sets of tracks and rails as such corporation may deem necessary, and it shall be lawful for such corporation, its agents, engineers, superintendents, or others in its employ to enter at all times upon all lands or waters for the purpose of exploring, surveying, leveling and laying out the route or routes of such railroad, and of locating the same, and all necessary works, buildings, conveniences, appurtenances and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes of such railroad and the location or locations of all other works, buildings, conveniences, appurtenances and appendages thereof, shall have been determined upon, and a survey of such route or routes, location or locations deposited in the office of the secretary of state, then it shall be lawful for every such corporation formed under this act, upon payment or tender of such compensation as hereinbefore provided, by the officers, agents, engineers, superintendents, workmen and other persons in their employ, to construct, maintain and operate a railroad with a single or double track, with such side tracks, turnouts, offices, stations and depots as they may deem necessary at and between the points named in the articles of association, commencing at or within and

extending to or into any town, city or village named as the place of terminus, and from time to time, either before or after completion of the main line, construct, maintain and operate branches within the limits of any county through which said road may pass, lay rails, and for that purpose to enter upon, take possession of, hold, have, use, occupy and excavate any lands, and erect any embankments, bridges and all other necessary works, and to do all other things which may be suitable or necessary for the completion, repairs or management of said railroad, and for the conveyance of passengers and freight to and from the termini thereof by steam power; provided, always, that the payment or tender of payment of all damages for the occupancy of all lands through, under or upon which said railroad and its conveniences, appurtenances and appendages may be laid out or located, be made before the said corporation, or any person under its direction or employ shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said railroad and its conveniences, appurtenances and appendages and of locating the same, unless the consent of the owner or owners of such lands be first had and obtained; and provided further, that the survey of the route of any branch shall not be filed in the office of the secretary of state until the officers or directors of the corporation shall have deposited with the state treasurer a sum equal to at least two thousand dollars for every mile and a proportionate sum for any distance less than a mile, of such branch which it is proposed to construct, and the said treasurer shall be custodian of such fund, and shall hold the same, subject to be repaid to the directors or treasurer of such company in sums of two thousand dollars for each mile and a proportionate sum for any distance less than a mile, of such branch upon the construction of which it shall be proved to his satisfaction that such amount has been expended; and provided further, that the construction of all such branches shall be commenced within six months from the date of filing the survey thereof

as aforesaid and shall be completed and opened within three years from the date of the commencement of the construction as aforesaid.

### **BRIDGES, PASSAGES, ETC.**

SECTION 80. It shall be the duty of every railroad corporation organized under this act to construct and keep in repair good and sufficient bridges and passages over, under or across the said railroad or right of way where any public or other road, street or avenue, now or hereafter laid shall cross the same, so that public travel on the said road shall not be impeded thereby; and it is further provided, that such bridges and passages shall be of such width and character as shall be suitable to the locality in which the same are situated; and also where the said road shall intersect any farm or lands of any individual, to provide and keep in repair suitable and convenient wagonways, over, under or across the said railroad, and shall also construct and maintain suitable and proper cattleguards at all road crossings; provided, always, that in case any such railroad shall cross any street or streets, highway or highways, in any city or incorporated town, it shall be either above or below the grade of said street or streets, highway or highways, at such distance as shall not interfere with the free and uninterrupted use of such street or streets, highway or highways; provided, further, that the council of any city or the commissioners of any incorporated town, or other persons having control over such street or streets, highway or highways, may grant permission to said corporation to cross such street or streets, highway or highways within the limits of the respective city or incorporated town at grade, if they deem it to be for the best interest of the city or incorporated town; and further provided, that in the event that such corporation shall not, within a reasonable time after notification from the council of the city or commissioners of the incorporated town or other persons having control over such street or streets, highway or highways, in which such bridges

and passages are to be so constructed, or repaired, proceed to construct or repair the same as required by this act, the said council or commissioners or other persons aforesaid may, in the corporate name of such city or town, institute proceedings in the court of chancery against such corporation to compel the specific performance of the duties imposed upon such corporation by this section of this act, and in case a decree shall be made against such corporation in said proceedings, commanding it to specifically perform said duties, within a reasonable time to be fixed, and if such corporation shall neglect or refuse to specifically perform such duties within such time, the chancellor, upon proof of such neglect or refusal, may, in his discretion, issue a writ of injunction to restrain said corporation from the exercise of any franchise or the transaction of any business in this state until said corporation shall have obeyed the command of said decree and shall have paid the costs of said proceedings, including a reasonable allowance to the solicitor of such city or town, to be fixed by the chancellor; and further provided, that said council or commissioners or other persons aforesaid, in the event of the failure of such corporation to construct or repair such bridges or passages within a reasonable time after notification as aforesaid, may, if they deem it advisable so to do, proceed themselves to construct or repair such bridges or passages, and when the costs thereof shall have been ascertained, the same may be collected of and from said corporation by said council or commissioners or other persons aforesaid by an action at law in any court of competent jurisdiction; provided further, that the permission of the council of any city, of the commissioners of any incorporated town or other persons hereinbefore referred to, shall not be necessary for the purpose of crossing any street or streets, highway or highways, at grade, unless said street or streets, highway or highways, at the point where said railroad shall cross, or at some point between the crossing of said railroad and the nearest terminus of said street or streets, highway or

highways, shall be in actual use by and for pedestrians and teams at the time of acquirement of the right of way of said railroad across such street or streets, highway or highways.

### **CROSSINGS, SWITCHES, SIGNALS, ETC.**

SECTION 81. That any railroad corporation created under this act which shall have been duly located the route of its railroad by a survey deposited in the office of the secretary of state, as required by section 79, shall have power in the construction of its said railroad on such route, to cross any canal, navigable stream or water-course between its termini, but in such manner as not unnecessarily to impede the navigation and use thereof; and shall also have power to cross any railroad or railway intervening between such termini and acquire the necessary easement for such crossing either by agreement with the corporation owner thereof or, on failure to agree, by condemnation proceedings in the manner prescribed by section 78. Provided, however, that whenever practicable so to do, the crossing at grade of any railroad or railway shall be avoided, but if not practicable, the crossing may be at grade, subject to the further provisions made by this section, and in that event it shall be the duty of the corporation whose railroad track or tracks shall cross the track or tracks of such other railroad or railway company, at its own expense to erect and maintain at such crossing a signal tower and signals of a generally approved pattern with an electric warning attachment, and also to maintain an interlocking system with derailing switches, and keep a competent watchman and switchman on duty thereat; and the trains of the crossing company shall come to a full stop at least two hundred feet from the tracks of the railroad or railway crossed; and the trains or cars of the company owning or operating the railroad or railways so crossed at grade shall have precedence and priority of movement over the trains of the company constructing the crossing. And provided further, that no such grade crossing shall be permitted or

effected until the question of the practicability of an overhead or undergrade crossing shall have been considered and determined by the chancellor, who shall upon the petition or bill of the company desiring to effect such crossing at grade, have full power and jurisdiction upon notice to and answer by the company whose tracks are proposed to be crossed, to hear and determine the matter by an appropriate decree, either refusing or permitting the crossing at grade, and if permitted to prescribe and regulate by such decree the manner and character of the said crossing, together with such safeguards against collisions thereat, in addition to those by this section provided as he may deem proper; with the right of appeal from the chancellor's decree to the supreme court by either party, as in other cases in equity.

#### **LIMITATION FOR COMMENCEMENT AND COMPLETION.**

SECTION 82. That any corporation created under this act for the purpose of constructing a railroad, shall commence the proposed construction within six months from the date of its organization, and complete at least one track of said road within three years from the date of the commencement, as aforesaid; provided, that if any company or corporation organized under this act shall fail to comply with the provisions of this section, it shall thereby forfeit the franchise given it by this act; provided, further, that if any corporation organized under this act, shall be restrained, prevented or enjoined by any proceedings whatever at law or equity from prosecuting the work on its road, or from opening or completing its said road, the time during which any such corporation shall be so restrained, prevented or enjoined, shall not be taken or computed as any part of the time allowed and limited in this section for the opening and completing of said road.

#### **POWER TO BORROW MONEY, ETC.**

SECTION 83. Any corporation organized under this act for the construction and operation of a railroad, shall have power

to borrow such sums of money, from time to time, not exceeding in the aggregate double the amount of its full paid capital stock, as shall be necessary to build, construct, or repair its road, and furnish all necessary engines and other equipments for the uses and objects of said corporation, and to secure the repayment thereof by the execution, negotiation and sale of any bond or bonds, and secure the same by mortgage on said lands, privileges, franchises and appurtenances of and belonging to said corporation, provided that said corporation shall not plead any statute or statutes against usury in any court of law or equity, in any suit instituted to enforce the payment of any bond or mortgage executed under the provisions of this section; and provided further, that said bonds and mortgages shall constitute a first lien on the railroad, its cars, real estate and franchises, and the proceeds of said bonds shall be used for the purpose of aiding in the construction of said railroad and equipments; and provided further, that if any person or persons shall issue such bonds to any greater amount than double the amount, at the time of such issue, that shall have been actually paid up on the capital stock of such railroad, he, she or they shall be guilty of a misdemeanor, and shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than three years, or by both at the discretion of the court.

#### **FENCES, CATTLE GUARDS, ETC.**

SECTION 84. Every corporation created under this act, for the construction of a railroad, shall erect and maintain fences on both sides of its road, of the height and strength of a fence required by law, with openings or gates or bars therein at farm crossings or the road for the use of proprietors of lands adjoining such railroad; and shall also construct and maintain cattle guards at all road crossings suitable and sufficient to prevent cattle and other animals from getting on the railroad; and until such fences and cattle guards shall be duly made, the corporation shall be liable for all damages which



shall be done by their engines and cars to cattle, horses or other animals thereon; and after such fences and guards shall be duly made and maintained the corporation shall not be liable for any such damages, unless negligently or wilfully done; and if any person shall ride, lead or drive any horse or other animal upon such railroad and within such fences and guards other than at farm crossings, without the consent of the corporation, he shall for every such offense forfeit a sum not exceeding ten dollars, and shall also pay all damages which shall be sustained thereby to the party aggrieved; it shall not be lawful for any person other than those connected with or employed upon the railroad to walk along the track or tracks of any such railroad, except when the same be laid along public roads or streets.

#### **BADGE OF CONDUCTOR, ETC.**

SECTION 85. Every conductor, baggagemaster or brakeman of any railroad corporation formed under this act, employed in a passenger train, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters of the name of the corporation by which he is employed; no conductor or collector of fares or tickets without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any powers of his office, and no officer without such badge shall have authority to meddle or interfere with any passenger, his baggage or property.

#### **DAMAGING PROPERTY OF ROAD.**

SECTION 86. Any person who shall wilfully impair, injure, destroy or obstruct the use of any railroad enjoyed under the provisions of this act or any of its necessary works, wharves, bridges, carriages, engines, cars, machines, or other property, shall forfeit and pay to the corporation the sum of fifty dollars, to be by it recovered in any court having competent jurisdiction, in any action of debt; and further shall be liable for all damages sustained.

**ANNUAL REPORT TO STOCKHOLDERS.**

SECTION 87. It shall be the duty of every railroad corporation created under the provisions of this act to make an annual report to the stockholders of its operations, which report shall be verified by the affidavit of the secretary, treasurer, superintendent or directors of the corporation, and shall state :

The entire length of the road in operation, the length of single track, the length of double track, and the weight of rail per yard.

The full amount of the capital stock actually subscribed and the full amount paid thereon.

The entire amount of the actual cost of the road, showing the amount expended for the right of way, bridging, grading, iron and other buildings respectively, and for all other purposes incidental to the construction of such road.

The nature of the amount of its indebtedness, distinguishing the first or other mortgage bonds, and the unsecured indebtedness and the amount due the corporation.

The amount received for the transportation of passengers, property and mails, for interest and from all other sources respectively.

The amount of freight, specifying the quantity in tons or other usual mode of measurement.

The full amount paid for repairs of the road, buildings, engines and cars respectively, for fuel, taxes and interest, specifying the indebtedness on which the same is paid; for the wages and employés; the aggregate amount paid for salaries of officers and for any other purpose incidental to the business of transportation, so as to give a complete statement of the entire annual expense of the corporation.

The entire amount paid for loss and damage to freight and injury to person and property.

The full number and amount of dividends, and when made and in what manner such dividends have been paid.

The entire amount appropriated to sinking fund, and the

manner in which the same has been applied, and the total amount then held by such sinking fund.

The whole number of persons killed or injured, the causes thereof, if known, and whether passengers or persons employed by the corporation; and the secretary of each railroad corporation, formed as aforesaid, shall mail to every stockholder thereof, whose post-office address is known, a copy of said annual report, and shall file a certified copy thereof with the secretary of state on or before the expiration of fifteen days from the making of such annual report.

### **MERGER.**

SECTION 88. Any two or more railroad corporations created under this act, or any one of such corporations, and a corporation now existing for the construction and operation of a railroad whose charter does not prohibit merger or consolidation, may consolidate into a single corporation in the manner provided in section 54 of this act, and the other sections thereof relating to the consolidation of corporations, and such new corporation shall possess all the powers, rights and privileges conferred upon such two or more corporations, and shall be subject to all the restrictions and liabilities and perform all the duties imposed by the provisions of their respective charters or certificates of incorporation not inconsistent with the provisions of this act.

### **SIGNAL BOARDS.**

SECTION 89. Every railroad corporation formed under this act shall cause signal boards, well supported by posts, or otherwise, at such heights as to be easily seen by travelers, and not obstructing travel, containing on each side, in capital letters, at least five inches high, the following inscription, "Railroad Crossing," to be placed and constantly maintained at such public highway where it is crossed by the railroad at the same level; but such board need not be put up in cities or towns, unless required by the authorities thereof.

**GATES, FLAGMEN, ETC.**

SECTION 90. Whenever, in the opinion of the authorities of any city or incorporated town, the public interest requires that a gate be erected and maintained, or a flagman stationed and kept at the place where any highway or street is crossed, within the corporate limits of such town or city, by any railroad constructed under this act, they shall give the superintendent or manager of the railroad written notice that the same is required, and the corporation shall, within the time prescribed in such notice, erect and maintain at such crossing the style of gate directed in said notice, and keep a man in charge of the same during such hours as the said authorities may designate, or keep a flagman at such crossing during such hours as they may require. And the said authorities may authorize the discontinuance of such gate or flagman whenever in their judgment the public interest no longer requires the same.

**LIGHTING OF CARS.**

SECTION 91. No passenger car on any railroad of any corporation organized under the provisions of this act shall be lighted by naphtha or by illuminating oil or fluid made in part of naphtha, or of any oil or fluid which will ignite at a temperature of less than three hundred degrees Fahrenheit.

**AIR BRAKE.**

SECTION 92. No regular or other passenger train on any railroad constructed under this act shall be run without an air brake, or some equally effective appliance for controlling the speed of trains, which may be applied by the engineer to each car composing the train, and which shall at all times be kept in good condition and ready for use at the discretion of the engineer.

SECTION 93. Any corporation failing to comply with or violating or permitting any of its employes or agents to violate any of the provisions of sections 85, 89, 90, 91 and 92 of this act shall in addition to subjecting itself to any damages

that may be caused by such failure or violation, be guilty of a misdemeanor, and upon conviction thereof be fined for failure or violation, not less than one hundred dollars nor more than five hundred dollars.

### **DISCRIMINATION IN CHARGES, ETC.**

SECTION 94. No railroad or railway corporation organized under this act shall charge, demand or receive from any person, company or corporation for the transportation of passengers or property a greater sum than it shall charge or receive from any other person, company or corporation for like service, from the same place, under like conditions, under similar circumstances, and for the same period of time. For every violation of the provision of this section such corporation shall be liable to the party suffering thereby in double the entire amount so charged to such party, to be recovered before any court having jurisdiction thereof; provided, however, that nothing in this section shall be construed to prohibit the carriage or handling of persons or property free or at reduced rates for the United States, state or municipal governments, or to or from fairs and expositions for exhibitions thereof; or the free carriage of destitute and homeless persons transported by charitable societies and the necessary agents employed in such transportation; or the issuance of mileage, excursion, or commutation passenger tickets; nor to prohibit any such corporation from giving reduced passenger rates to ministers of religion solely engaged in ministerial duties, or to the United States, state or municipal governments; nor to prohibit any such corporation from giving free carriage to their own officers and employés; or to prevent the principal officers of any such corporation from exchanging passes or tickets with other railroad corporations for their officers and employés; nor to prohibit any such corporation from giving reduced rates of transportation to other railroad corporations for railroad construction, material, equipment or supplies.

**FEES TO STATE.**

SECTION 95. Every railroad corporation organized under the provisions of this act shall be required upon filing the certificate to pay to the secretary of state the fees hereinafter provided for; and also pay to the state treasurer for the use of the state such tax as is required by the provisions of chapter 458, volume 12 of the laws of this state, entitled "An act to raise revenue for this state," and Chapter 392, volume 13 of the laws of this state, entitled "An act taxing railroad and canal companies in this state;" provided, however, that such railroad shall be entitled to the rights of commutation therefor as is provided by law for other railroad corporations of this state.

**STEAM, HEAT AND POWER.**

SECTION 96. Every corporation organized under the provisions of this act for the purpose of producing or distributing steam, heat and power, shall in addition to the powers conferred upon corporations generally, have full authority to lay the necessary pipes and conduits beneath the public roads, highways, streets, avenues and alleys in this state; provided, however, that such pipes and conduits shall be laid at least three feet below the surface of the same, and shall not in any wise unnecessarily obstruct or interfere with public travel, or damage public or private property; and provided, also, that the consent of the council, town commissioners or other persons having control over the public roads, highways, streets, avenues and alleys of the city, town and district wherein or through which it is contemplated to lay such pipes and conduits beneath such public roads, highways, streets, avenues or alleys shall first, and as a condition precedent, be obtained before any such public roads, highways, streets, avenues or alleys shall be disturbed, opened or dug up; such consent of said council or town commissioners to be by ordinance of such council or commissioners duly adopted, or of such per-

son having control over the public roads or highways, by resolution adopted at a meeting to be held not less than thirty days after notice thereof shall have been given by notices posted up in five of the most public places on the public road or highway which is proposed to be used for the purposes aforesaid; that such use of public roads, highways, or streets, avenues and alleys in any of the cities, towns or districts of this state shall be subject to such terms, regulations and restrictions as may be imposed by the council, town commissioners or other persons having control over the public roads and highways of the district, and that the portions of surface of the roads, highways, streets, avenues and alleys disturbed in laying the said pipes shall be immediately restored to their original condition, and that any pavements which are removed for the purpose of laying or repairing the pipes shall be restored to as good condition as they were previous thereto, and so maintain the same for six months after the completion of the work; and in case of failure on the part of the corporation to so maintain and restore the same, the street commissioner or other officer having supervision of the streets may properly restore and maintain the same, and the costs thereof may be recovered by the city or town from the corporation in any court of competent jurisdiction.

### **LAYING PIPES.**

SECTION 97. It shall be the duty of every corporation organized under the provisions of this act in laying any pipes or conduits in any of the public roads, highways, streets, avenues and alleys, to be used for conveying steam, heat or power, to lay the same at a distance not less than three feet, if possible, from the outside of any water or gas pipe already laid, except in cases where it shall be necessary that said pipes or conduits shall cross any such water or gas pipe, and there such pipes or conduits shall be at least twelve inches distant from the outside of any water or gas pipe already laid.

**ELECTRICITY, HEAT AND POWER.**

SECTION 98. Every corporation organized under the provisions of this act for the purpose of constructing, maintaining and operating works for the supply and distribution of electricity for electric lights, heat or power, shall in addition to the powers conferred upon corporations generally, have full power to use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same, to sustain the necessary wires and fixtures; provided that the consent of the council, town commissioners or other persons having control over the public roads, highways, streets, avenues and alleys of the city, town and district in or upon which the said posts or poles are to be erected, shall first, and as a condition precedent, be obtained; and provided further, that no posts or poles shall be erected in any street of any city or incorporated town except in those streets which shall be designated by the said authorities thereof, and then only in such place and manner as shall be thus designated, and that the same shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over the said streets, highways and roads; and that the use of public streets in any of the cities and incorporated towns of this state shall be subject to such regulations and taxation as may be first imposed by the corporate authorities of such cities and towns; and provided, also, that no posts or poles shall be erected upon the soil or property of any person or persons without first obtaining the consent in writing of the owner or owners of the soil or property; and provided, also, that any wire crossing a railroad shall not be at a less elevation than twenty-three feet.

**LAYING PIPES OR CONDUITS, ETC.**

SECTION 99. Every such corporation is authorized and empowered to lay pipes or conduits and to lay wires therein beneath the public roads, highways, streets, avenues and alleys as they may deem necessary; provided, that said pipes



and conduits shall be laid at least two feet below the surface of the same and shall not in any wise unnecessarily obstruct or interfere with public travel, or damage public or private property, and shall not be laid nearer than three feet, except as is hereinafter excepted, to any water or gas main; but no public streets shall be opened for the purpose of laying any such pipes, conduits or wires without the consent of the council of any city or the town commissioners of any incorporated town, or other persons having control over said public roads, highways, streets, avenues and alleys; and provided, that such use of the public streets in any of the cities and towns of this state shall be subject to such regulations, taxation and restrictions as may be first imposed by the corporate authorities of such cities and towns.

#### **LAYING WIRES.**

SECTION 100. Every corporation in laying wires for conveying electricity or the conduits containing said wires, shall lay the same at the greatest practicable distance from the outside of any water or gas pipe now laid down, and when it is practicable and so provided in its permits such distance shall not be less than three feet, except in case where it shall be necessary that the said wires or conduits shall cross or intersect any such water or gas pipe.

#### **GAS AND WATER.**

SECTION 101. Every corporation organized under the provisions of this act for the purpose of the production, distribution and sale of gas, to be made from coal or other materials, and also every corporation organized as aforesaid for the supply and distribution of water, shall in addition to the powers conferred upon corporations generally, have full authority to lay down necessary pipes, water-mains and conduits beneath the public roads, highways, streets, avenues and alleys of any city, incorporated town or district of this state; provided, however, that such pipes, water-mains and conduits shall be

laid at least three feet below the surface of the same, and shall not in any wise unnecessarily obstruct or interfere with public travel, or damage public or private property; and provided, also, that the consent of the council, town commissioners or other persons having control over the public roads, highways, streets, avenues and alleys of the city, town and district wherein or through which it is contemplated to lay such pipes, water-mains and conduits beneath such public roads, highways, streets, avenues or alleys shall first and as a condition precedent, be obtained, before any of such public roads, highways, streets, avenues or alleys shall be disturbed, opened or dug up; such consent of such council or town commissioners or other persons having control over such roads, highways, streets, avenues and alleys to be by ordinance of such council or commissioners duly adopted, or by resolution of such persons having control over the public roads or highways, adopted at a meeting to be held not less than thirty days after notice thereof shall have been given by notices posted up in five of the most public places on the public road or highway which is proposed to be used for the purpose aforesaid; that such use of public roads, highways or streets, avenues and alleys in any of the cities, towns or districts of this state shall be subject to such terms, regulations, taxation, and restrictions as may be imposed by the council, town commissioners or other persons having control over the public roads and highways of the district, and that the portions of surfaces of the roads, highways, streets, avenues and alleys disturbed in laying the said pipes shall be immediately restored to their original condition, and that any pavements which are removed for the purpose of laying or repairing the pipes, water-mains and conduits, shall be restored to as good condition as they were previous thereto, and so maintain the same for six months after the completion of the works, and in case of failure on the part of the corporation to so restore and maintain the same, the street commissioner or other officer having supervision of the streets may properly restore

and maintain the same, and the costs thereof may be recovered by the city or town from the corporation in any court of competent jurisdiction.

### **TELEGRAPH OR TELEPHONE.**

SECTION 102. That any telegraph or telephone corporation organized under the provisions of this act shall in addition to the powers conferred upon corporations generally, have authority to occupy and use public streets, roads, lanes, alleys, avenues, turnpikes and water-ways within this state, or elsewhere, if they shall extend their lines and business, for the erection of poles and wires or cable or underground conduits, portions of which they may lease, rent or hire to other like companies; provided, that before entering upon any street, road, lane, alley, avenue, turnpike or water-way the consent of the authorities having jurisdiction thereof shall have first been obtained, and the same shall be used and occupied under such rules and regulations as shall be prescribed by such authorities; and that the portions of the surfaces of the streets, avenues or alleys, disturbed in laying the wires, cables or underground conduits shall be immediately restored to their original condition, and that any pavements which are removed for the purpose of laying or repairing the wires, cables or underground conduits, shall be restored to as good condition as they were previous thereto, and so maintained for six months after the completion of the works, and in case of failure on the part of the corporation to so restore and maintain the same, the proper authorities having supervision of the streets, avenues and alleys may properly restore and maintain the same, and the cost thereof may be recovered by the city, town or district from the corporation in any court of competent jurisdiction; provided, that all posts or poles which shall be erected by authority herein conferred shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over the said roads and highways; and provided further, that all wires fastened upon

posts or poles erected as aforesaid, shall be placed at the height of not less than twenty feet above all road crossings, and twenty-three feet above railroad crossings; and that no posts or poles shall be erected upon the soil or property of any person without first obtaining the written consent of the owner thereof.

### **RAILWAYS. FORMATION.**

SECTION 103. Any number of persons not less than five may form a corporation under the provisions of this act, which corporation so formed as aforesaid, shall have perpetual succession for the purpose of constructing, maintaining and operating a railway, for the transportation of freight and passengers, the carriages, coaches and cars of which to be moved or propelled by electricity, by cable or motor, or by any improved motive power other than steam, and shall do and perform the several matters and things hereinafter stated, and shall have and exercise all the rights, powers and privileges hereinbefore and hereinafter conferred, and be subject to all the duties, limitations, restrictions and liabilities hereinafter imposed upon such corporations; and for that purpose may make and sign articles of association, in lieu of the articles of association hereinbefore required by the provisions of this act, for corporations generally and for railroad corporations where steam power is used, in which shall be stated:

1. The name of corporation.
2. The place from which and to which such railway is to be constructed, maintained and operated.
3. The estimated length of such railway and the name of each county in this state through or into which it is intended to be made.
4. The amount of the capital stock of the corporation which shall not be less than two thousand dollars for every mile of road proposed to be constructed.
5. The number of shares of which said capital stock shall consist.

6. The names and places of residence of the five directors of the corporation who shall manage its affairs for the first year and until others are chosen in their places; and each such person shall subscribe thereto his name, place of residence and the number of shares of stock he agrees to take in such corporation. At least one of said directors shall be a resident of this state.

7. The name of the city, town, county or place within the county, in this state, in which its principal office or place of business will be located in this state.

#### **APPROVAL OF JUDGE, FILING, ETC.**

SECTION 104. Said articles of association shall be presented to one of the judges of the superior court of the state of Delaware, who shall examine the same, and if found to conform to the requirements of this act, shall endorse his certificate thereon accordingly. On compliance with the foregoing provisions and the requirements of the next succeeding section, which latter shall be evidenced by the receipt of the state treasurer, delivered to the secretary of state, such articles of association may be filed in the office of the secretary of state, who shall endorse thereon in writing the day they are filed, and record the same in a book to be provided by him for that purpose; and upon tendering the said articles to the secretary of state to be filed, the persons who have so subscribed such articles of incorporation and all persons who shall become stockholders in such corporation shall be a corporation by the name specified therein; every such corporation formed under this act, in addition to the general powers hereinbefore in this act set forth, shall have power:

#### **ADDITIONAL POWERS.**

1. To have authority, by its officers and servants, to enter upon the lands or waters of any person or persons, which may be necessary, to make such examination and surveys for its proposed railway as shall be required to be made in the

selection of the most advantageous route, but subject at all times to responsibility for all and any damages which shall be done to the property of any such person or persons.

2. To aid in the construction, operation and maintenance and accommodation of its railway may take and hold such voluntary grants of real estate and other property as shall be made to it, but, in all instances, the real estate received as a voluntary grant shall be held and used for the purpose of such grant only.

3. For the sole purpose of the construction, operation and maintenance of its railway, and the stations and other accommodations necessary to accomplish the object of its incorporation, it may purchase, hold and use all such real estate and other property as may be necessary.

4. To construct its road and lay out the same as hereby provided and for the purposes of cuttings and embankments to take as much more land as may be necessary or required for the proper construction and security for the road.

5. To use and exercise all other rights and powers hereby granted.

#### **STOCK REQUIRED TO BE PAID.**

SECTION 105. Articles of association, in compliance with the provisions of sections 103 and 104 of this act, shall not be filed and recorded in the office of the secretary of state until at least five hundred dollars of stock for every mile of railway proposed to be made is subscribed thereto and paid, in good faith and in cash, to the directors named in said articles of association, nor until the said directors shall have deposited the said money so subscribed and paid to them with the state treasurer, who is constituted the custodian of the same, and shall hold the same, subject to be repaid to the directors of the said corporation, or to the treasurer thereof, in sums of five hundred dollars for each mile of said railway, upon the construction of which it shall be proved, to his satisfaction, that the said corporation has expended at least the sum of five hundred dollars, nor until there is endorsed on such ar-

ticles of association, or annexed thereto, an affidavit, made by at least three of the directors named in said articles of association, that the amount of stock required by this section has been in good faith subscribed and paid in cash as aforesaid, and that it is intended, in good faith, to construct or maintain and operate the railway mentioned in such articles of association, which affidavit shall be recorded with the articles of association as aforesaid.

#### **SUBSCRIPTIONS TO STOCK. TEN PER CENT. TO BE PAID ON.**

SECTION 106. The directors named in said articles of association may, when such articles of association and affidavit are filed and recorded in the office of the secretary of state, in case the whole of the capital stock is not before subscribed, continue to receive subscriptions until the whole capital stock is subscribed; at the time of subscribing every subscriber shall pay to the directors ten per centum on the amount subscribed by him, in money, and no subscription shall be received or taken without such payment.

#### **DIRECTORS.**

SECTION 107. That there shall be a board of not less than five directors of every corporation formed under this act for the purpose of constructing and operating railways, to manage its affairs. Said directors shall be chosen annually in the same manner that is provided for the choosing of directors for railroads as provided in section 74 of this act, and the inspectors to hold the first election shall be appointed by the board of directors named in the articles of association; no person shall be a director unless he shall be a stockholder, owning stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen: at every election of directors the books and papers of such company shall be exhibited to the meeting and subject to the inspection of those present, provided a majority of the stockholders present shall require it.

**ORGANIZATION.**

SECTION 108. That within thirty days after the articles of association are filed in the office of the secretary of state, the directors therein named shall organize by the election of one of their number president; they may also elect a treasurer and secretary and adopt such by-laws as may appear to be proper and right for the government of the corporation.

**INCREASE OF CAPITAL STOCK.**

SECTION 109. That in case the capital stock of any company formed under this act is found to be insufficient for constructing and operating its railway, such company may with the concurrence of two-thirds in amount of all its stockholders increase its capital stock, from time to time, to any amount required for the purpose of constructing, maintaining and operating its railway; such increase shall be authorized under the provisions which are contained in section 76 of this act, in relation to railroads and in compliance with all conditions and requirements contained in said section in relation thereto.

**STOCK, PERSONAL ESTATE, TRANSFER OF.**

SECTION 110. That the stock of every company formed under this act shall be deemed personal estate and be transferable in the manner prescribed by the by-laws of the company, but no share shall be transferable until all previous calls thereon shall have been paid.

**ASSESSMENT OF DAMAGES, ETC.**

SECTION 111. Whenever any corporation created under this act, for constructing, maintaining and operating a railway, cannot agree with the owner or owners of any land, sand, earth, gravel or other materials necessary to be taken and used in the construction of the said railway, for the purchase thereof, the said corporation may proceed for the condemnation thereof in the manner provided for in section 78



of this act, in relation to railroads; and when the damages ascertained therefor in the manner provided in said section shall have been paid or deposited in the proper bank as therein provided, the corporation shall become entitled to have, hold, use and enjoy the said lands and materials for the purposes by them required, forever.

### **WIDTH, SURVEYS, ETC.**

SECTION 112. That any railway constructed under the provisions of this act shall not exceed forty feet in width, unless more land shall be required for the slopes of cuts and embankments, with as many sets of tracks and rails as such corporation may deem necessary, and it shall be lawful for such corporation, its agents, engineers, superintendents, or others in its employ, to enter at all times upon all lands or waters for the purpose of exploring, surveying, leveling and laying out the route or routes of such railway, and of locating the same, and all necessary works, buildings, conveniences, appurtenances and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes of such railway and the location or locations of all other works, buildings, conveniences, appurtenances and appendages thereof shall have been determined upon, and a survey of any such route or routes, location or locations deposited in the office of the secretary of state, then it shall be lawful for every such corporation formed under this act, upon payment or tender of such compensation as hereinbefore provided by its officers, agents, engineers, superintendents, workmen and other persons in their employ, to construct, maintain and operate a railway with a single or double track, with such side tracks, turnouts, offices, stations and depots as they may deem necessary at and between the points named in the articles of association, commencing at or within and extending to or into any town, city or village named as the place of terminus, and from time to time, either before or after completion of the main line, construct, maintain and

operate branches within the limits of any county through which said railway may pass, lay rails, and for that purpose to enter upon, take possession of, hold, have, use, occupy and excavate any lands, and erect any embankments, bridges and all other necessary works, and to do all other things which may be suitable for the completion, repairs or management of said railway, and for the conveyance of passengers and freight to and from the termini thereof by motive power other than steam; provided, always, that the payment or tender of payment of all damages for the occupancy of all lands through, under or upon which the said railway and its conveniences, appurtenances and appendages may be laid out or located be made before the said corporation, or any person under its direction or employ shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said railway and its conveniences, appurtenances and appendages, and of locating the same, unless the consent of the owner or owners of such lands be first had and obtained; and provided further, that the survey of the route of any branch shall not be filed in the office of the secretary of state until the officers or directors of the corporation shall have deposited with the state treasurer a sum equal to at least five hundred dollars for every mile, and a proportionate sum for any distance less than a mile, of such branch which it is proposed to construct, and the said treasurer shall be custodian of such fund, and shall hold the same subject to be repaid to the directors or treasurer of such company in sums of five hundred dollars for each mile, and a proportionate sum for any distance less than a mile, of such branch upon the construction of which it shall be proved to his satisfaction that such amount has been expended; and provided further, that the construction of all such branches shall be commenced within six months from the date of filing the survey thereof as aforesaid, and shall be completed and opened within two years from the date of the commencement of the construction as aforesaid.

**BRIDGES AND PASSAGES.**

SECTION 113. It shall be the duty of every railway corporation organized under this act to construct and keep in repair good and sufficient bridges and passages over, under or across the said railway or right of way where any public or other road, street or avenue now or hereafter laid out shall cross the same, so that public travel on the said road shall not be impeded thereby; and it is further provided, that such bridges shall be of such width and character as shall be suitable to the locality in which the same are situated; and also where the said railway shall intersect any farm or lands of any individual, to provide and keep in repair suitable and convenient wagonways over, under and across the said railway, and shall also construct and maintain suitable and proper cattle guards at all road crossings; provided, always, that in case any such railway shall cross any street or streets, highway or highways, in any city or incorporated town, it shall be either above or below the grade of said street or streets, highway or highways, at such distance as shall not interfere with the free and uninterrupted use of such street or streets, highway or highways; provided further, that the council of any city or the commissioners of any incorporated town, or other persons having authority or control over said highways and streets respectively, may grant permission to said corporation to cross such street or streets, highway or highways, within the limits of the respective city or incorporated town at grade, if they shall deem it to be for the best interest of the city or incorporated town; and further provided, that in the event that such corporation shall not, within a reasonable time after notification from the council of the city or commissioners of the incorporated town or other persons having authority or control over said highways and streets respectively in which such bridges and passages are to be constructed or repaired, proceed to construct or repair the same as required by this act, the said council or commissioners or other persons having authority or control over said highways

and streets respectively, may in the corporate name of such city or town, institute proceedings in the court of chancery against such corporation to compel the specific performance of the duties imposed upon such corporation by this section of this act, and in case a decree shall be made against such corporation in said proceedings, commanding it to specifically perform said duties within such time, the chancellor, upon proof of such neglect or refusal, may in his discretion issue a writ of injunction to restrain said corporation from the exercise of any franchise or the transaction of any business in this state until the said corporation shall have obeyed the command of such decree and paid the costs of said proceedings; and further provided, that the said council or commissioners or other persons having authority or control over said highways and streets respectively, in the event of the failure of such corporation to construct or repair such bridges or passages within a reasonable time after notification as aforesaid, may if they deem it advisable so to do, proceed themselves to construct and repair such bridges or passages, and when the costs thereof shall have been ascertained, the same may be collected of and from said corporation by said council or commissioners or other persons having authority or control over said highways and streets respectively, by an action at law in any court of competent jurisdiction; provided further, that the permission of the council of any city or the commissioners of any incorporated town or other persons having authority or control over said highways and streets respectively, hereinbefore referred to, shall not be necessary for the purpose of crossing any street or streets, highway or highways at grade, unless said street or streets, highway or highways, at the point where said railway shall cross or at some point between the crossing of said railway and the nearest terminus of said street or streets, highway or highways, shall be in actual use by and for pedestrians and teams at the time of the acquirement of the right of way of said railway across such street or streets, highway or highways.

**CROSSINGS, ETC.**

SECTION 114. That any railway corporation created under this act, which shall have duly located the route of its railway by a survey deposited in the office of the secretary of state, as required by section 112, shall have power in the construction of its said railway on such route, to cross any canal, navigable stream or water-course between its termini, but in such manner as not unnecessarily to impede the navigation and use thereof; and shall also have power to cross any railway or railroad intervening between such termini and acquire the necessary easement for such crossing either by agreement with the corporation owner thereof or, on failure to agree, by condemnation proceedings in the manner prescribed by section 78. Provided, however, that whenever practicable so to do the crossing of any railroad at grade shall be avoided, but if not practicable, the crossing may be at grade, subject to the further provision in this section contained, and in that event, it shall be the duty of the corporation whose railway track or tracks shall cross the track or tracks of the railroad company, to so construct its railway track or tracks, as that on each side of the right of way of the railroad company so crossed and at a safe and convenient distance therefrom, there shall be a disconnection in each rail of the railway tracks capable of being connected by means of a switch arrangement whereby the said railway tracks may be made continuous for the passage of the cars of the railway company over the right of way and tracks of the railroad company, which shall be operated at the expense of the railway company by a competent agent thereof who shall always be on duty at said crossing for this purpose; and provided further, that no such grade crossing shall be permitted or effected until the question of the practicability of an overhead or undergrade crossing shall have been considered and determined by the chancellor, who shall upon the petition or bill of the company, desiring to effect such crossing at grade, have full power and jurisdiction upon

notice to, and answer by the company whose tracks are proposed to be so crossed to hear, and, determine the matter by an appropriate decree, either refusing or permitting the crossing at grade, and if permitted, to prescribe and regulate by such decree the manner and character of the said crossing, together with such safeguards against collisions thereat in addition to those by this section provided for as he may deem proper with the right of appeal from the chancellor's decree to the supreme court by either party as in other cases in equity; and provided further, that any railway may cross any other railway either at grade, or overhead or under grade by an adequate structure, which, if under grade, shall be so located and constructed as not to disturb the road-bed so intersected, or, if overhead, shall be at such an elevation as not to impede or interfere with the free and safe passage of the cars on the railway so crossed.

#### **LIMITATION FOR COMMENCEMENT AND COMPLETION.**

SECTION 115. That any corporation created under this act for the purpose of constructing a railway, shall commence the proposed construction within six months from the date of its organization and complete at least, one track of said railway within two years from the date of commencement, as aforesaid; provided, that if any such company or corporation organized under this act shall fail to comply with the provisions of this section, it shall thereby forfeit the franchises given it by this act; provided further, that if any such corporation organized under this act, shall be restrained, prevented or enjoined by any proceedings whatever at law or in equity from prosecuting the work on its railway, or from opening or completing its said railway, the time during which any such corporation shall be so restrained, prevented or enjoined shall not be taken or computed as any part of the time allowed and limited in this section for the opening and completing of said railway.

**BORROWING MONEY, BONDS, ETC.**

SECTION 116. Any corporation organized under this act for the construction and operation of a railway, shall have power to borrow such sums of money, from time to time, not exceeding in the aggregate double the amount of its full paid capital stock as shall be necessary to build, construct or repair its railway, and furnish all necessary cars and equipments for the use and objects of said corporation, and to secure the repayment thereof by the execution, negotiation and sale of any bond or bonds, secured by mortgage on said lands, privileges, franchises and appurtenances of and belonging to the said corporation, provided that said corporation shall not plead any statute or statutes against usury in any court of law or equity, in any suit instituted to enforce the payment of any bond or mortgage executed under the provisions of this section; and provided further, that said bonds and mortgages shall constitute a first lien on the railway, its cars, real estate and franchises and the proceeds of said bonds shall be used for the purpose of aiding in the construction and operation of said railway; and provided further, that if any person or persons shall issue such bonds to any greater amount than double the amount, at the time of such issue that shall have been actually paid up on the capital stock of such railway, he, she or they, shall be guilty of a misdemeanor and shall be punished by a fine of not less than two thousand dollars, or by imprisonment for not more than three years, or by both, at the discretion of the court.

SECTION 117. The provisions of section 84 of this act shall be applicable to all railways that may be located and constructed under this act elsewhere than on turnpikes, highways or public roads.

**INJURY TO PROPERTY OF ROAD, PENALTY.**

SECTION 118. Any person who wilfully or maliciously obstructs any railway company in the legal use of its railway track, or delays the passing of the cars or railway carriages

thereon or aids or abets such detention or delay, shall be punished by a fine not exceeding fifty dollars, to be by it recovered in any court having competent jurisdiction in an action of debt; and further shall be liable for all damages sustained.

### **SIGNAL BOARDS.**

SECTION 119. Every railway corporation formed under this act shall cause signal boards, well supported by posts, or otherwise, at such heights as to be easily seen by travelers, and not obstructing travel, containing on each side in capital letters, at least five inches high, the following inscription, "RAILWAY CROSSING," to be placed and constantly maintained, at such public highway where it is crossed by the railway at the same level; but such boards need not be put up in the cities or towns, unless required by the authorities thereof.

Any corporation failing to comply with or violating or permitting any of its employes or agents to violate any of the provisions of this section, shall in addition to subjecting itself to any damages that may be caused by such failure or violation, be guilty of a misdemeanor and upon conviction thereof, be fined for each failure or violation, not less than one hundred dollars nor more than five hundred dollars.

### **ANNUAL REPORT TO STOCKHOLDERS.**

SECTION 120. It shall be the duty of every railway corporation created under the provision of this act, to make an annual report to the stockholders of its operations during the year, which report shall be verified by the affidavit of the secretary and treasurer and shall state:

The entire length of the railway in operation, the length of single track and the length of double track.

The full amount of the capital stock actually subscribed and the full amount paid thereon.

The entire amount of the actual cost of the railway, show-



ing the amount expended for the right of way, bridging, grading, iron and building respectively, and for all other purposes incidental to the construction of such railway.

The nature and amount of its indebtedness, distinguishing the first, second and third mortgage bonds, and the unsecured indebtedness and the amount due the corporation.

The amount received from all sources whatever and the full amount expended for all purposes.

The entire amount paid for loss and damage to freight and injury to person and property.

The full number and amount of dividends and when made and in what manner such dividends have been paid.

The entire amount appropriated to sinking fund and the manner in which the same has been applied, and the total amount then held by such sinking fund; the secretary of each railway corporation, formed as aforesaid, shall mail to every stockholder thereof, whose post-office address is known, a copy of said annual report and shall file a certified copy thereof with the secretary of state on or before the expiration of fifteen days.

### **MERGER.**

SECTION 121. Any two or more railway corporations created under this act, or any one of such corporations and a corporation now existing for the construction and operation of a railway, whose charter does not prohibit merger or consolidation, may consolidate into a single corporation in the manner provided in section 54 of this act, and the other sections hereof relating to the consolidation of corporations, and such new corporation shall possess all the powers, rights and privileges conferred upon such two or more corporations, and shall be subject to all the restrictions and liabilities and shall perform all the duties imposed by the provisions of their respective charters, or certificates of incorporation not inconsistent with the provisions of this act.

**FEES TO STATE.**

SECTION 122. Every railway corporation organized under this act shall be required, upon filing its certificate, to pay to the secretary of state the fees hereinafter provided for; and also pay such tax or taxes as are or may be imposed by law or by any authority having jurisdiction.

**PROHIBITED FROM USING STREETS WHERE OTHER TRACK IS LAID.**

SECTION 123. That no railway shall be authorized or empowered hereunder nor shall any consent or authorization of any board of officials, city, county or hundred, be held to authorize any railway to be constructed, maintained or operated upon any street upon which any track is now laid.

**LINES OF TELEGRAPH AND TELEPHONE FOR USE OF ROAD.**

SECTION 124. That it shall be lawful for every railroad or railway corporation organized under the provisions of this act or existing under the laws of this state and they are hereby authorized and empowered to erect, establish and maintain a line or lines of telegraph or telephone for their own use, along and upon the lands and right of way of such railroad or railway corporations.

**WORDS DEFINED.**

SECTION 125. Whenever the words "directors" and "managers" appear in any of the provisions of this act, they shall be construed to be synonymous terms; and whenever the word "railroad" occurs it shall be construed to be a road, the engines, cars, carriages and coaches on which are propelled by steam power; and whenever the word "railway" occurs, it shall be construed to be a road, the cars, carriages and coaches on which are propelled by electricity, by cable, motor or by any improved motive power, other than steam.

**COPIES, ETC., EVIDENCE.**

SECTION 126. That a copy of any articles of association for the construction of railways filed and recorded in pursuance to the provisions of this act, or of the record thereof, with a copy of the affidavit aforesaid, endorsed thereon or annexed thereto, and duly certified to be a copy by the secretary of state, shall be presumptive evidence of the incorporation of such corporation and of the facts therein stated.

**STATE FEES ON FILING CERTIFICATES.**

SECTION 127. On filing any certificate or other paper, relating to corporations, in the office of the secretary of state, the following fees and taxes shall be paid to the secretary of state, for the use of the state; for certificate of incorporation fifteen cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty dollars, and when any certificate of increase of the capital stock shall be filed as required by this act, the secretary of state shall demand and receive for the use of the state, fifteen cents on each one thousand dollars of such increase; and when two or more corporations shall consolidate or merge, he shall demand and receive for the use of the state fifteen cents on each one thousand dollars of capital authorized beyond the total authorized capital of the corporations consolidated or merged, but in no case less than twenty dollars.

Upon receiving and filing a certificate of dissolution, change of name, amended certificates of organization, (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of the number of shares, he shall demand and receive twenty dollars. All other certificates five dollars. Provided that in case of corporations for religious, charitable or educational purposes the tax shall not be charged or collected.

The fees of the secretary of state under this act shall be as follows:

For certified copies, the same as is now provided by law for

the secretary of state for certificates and copying; for receiving, filing and indexing certificates, statements, affidavits, decrees, agreements, surveys, reports and any other papers provided for by this act two dollars in each case; for recording and indexing certificates, articles of association and other papers required by this act to be recorded by the secretary of state the same fees as are now provided by law for the recording of deeds.

For state fees for filing the certificate of renewal of corporate existence see section 131, post.

### **SITUS OF CAPITAL STOCK.**

SECTION 128. For all purposes of title, action, attachment, garnishment, taxation and jurisdiction of all courts held in this state, the situs of the ownership of the capital stock of all corporations existing under the laws of this state whether organized under this act or otherwise, shall be regarded as in this state.

Contrary to the common-law rule corporations are now by force of statute subject to attachment proceedings: 14 Del. Laws, Ch. 90.

Under the laws of Delaware, stock in incorporated companies, with all the rights thereto belonging, is liable for the satisfaction of debts—i. e., to execution—and hence transfers of such stock may be void for fraud against creditors: *Colbert v. Sutton*, 5 Del. Chan. 294.

There was formerly some doubt whether a state could tax or otherwise exercise jurisdiction over stock of a domestic corporation owned by non-residents. It was strenuously urged that shares of stock have no situs at the domicile of the corporation but follow the domicile of the stockholder, and such was the common-law rule, but it is now well settled that a statute may be enacted by the state creating the corporation, giving to shares of stock a situs at the location of the corporation, and this whether the stock be held by residents or non-residents of the state.

See Cook on Corporations, section 566.

Thus it has been held that a state may tax the stock of a domestic corporation owned by a non-resident.

*Ottawa Glass Co. v. McCaleb*, 81 Ill. 556; *Bradley v. Bander*, 36 Ohio St. 28; *Tappan v. Merchants' Nat. Bank*, 19 Wall. 490; *Whitney v. Ragsdale*, 33 Ind. 107; *Mayor, etc., Balt. v. Balt., etc., R. R.*, 57 Md. 31; *First Natl. Bank v. Smith*, 65 Ill. 44; *American Coal Co. v. County Comrs.*, 59 Md. 185. The common-law rule is well expressed in *Union Bank v. State*, 9 Yerg. (Tenn.) 490.

It seems also to be settled that stock in a corporation is subject to attachment proceedings only in the domicile of the corporation.

A defendant's shares of stock cannot be reached by levy of attachment in an action commenced outside of the state wherein the corporation is incorporated.

Thus it was held in *Smith v. Downey*, 8 Ind. App. 179, that a citizen of Indiana could not attach certificates of stock owned by a non-resident in a Colorado corporation, even though the certificates were in the state of Indiana and within the jurisdiction of the court.

And in *Winslow v. Fletcher*, 53 Conn. 390, the court said that stock in a corporation, for the purposes of attachment, has its situs where the corporation is located. See also *Christmas v. Biddle*, 13 Pa. St. 223. *Cook on Corp.*, section 485.

## **RENEWAL AND EXTENSION OF CORPORATE EXISTENCE.**

SECTION 129. Any corporation, existing under the laws of this state, may, at any time before the expiration of the time limited for its existence, procure a renewal of its charter for any period, together with all the rights, franchises, privileges and immunities, and subject to all its existing debts, duties and liabilities, secured or imposed by its then existing charter, by filing a certificate of its president and secretary, duly sworn or affirmed to by such officer before any person authorized by the laws of this state to administer oaths or affirmations, with the secretary of state: which certificate shall set forth:

1. The name of the corporation, which shall be the existing name of said corporation at the time of such renewal:
2. The name of the city, town or place within the county in

which its principal office or place of business is located in this state.

3. The date when such renewal is to commence, which date shall be prior to the date of the expiration of the charter desired to be renewed, whether or not such renewal is to be perpetual, and, if not perpetual, the time for which such renewal is to continue:

4. That the corporation desiring to renew and so renewing its charter is duly organized and carrying on the business authorized by its existing charter.

It should be carefully noted that as a pre-requisite to the renewal provided for in this section, the corporation must file with the secretary of state an acceptance of the provisions of the constitution of 1897: Const., article IX, section 2.

#### **FILING CERTIFICATE OF RENEWAL AND RECORDING COPY.**

SECTION 130. Such certificate for the renewal and continuance of the existence of any such corporation shall be filed in the office of the secretary of state, who shall furnish a certified copy of the same under his hand and seal of office; said certified copy shall be recorded in the office of the recorder of the county in which the principal office of said corporation is located in this state, in a book kept for the purpose; and said certificate or a certified copy thereof duly certified under the hand of the secretary of state and his seal of office accompanied with the certificate of the recorder of the county wherein the same is recorded under his hand and seal of his office, stating that it has been recorded, the record of the same in the office of the recorder aforesaid, or a copy of said record duly certified by the recorder aforesaid, or the record of such certified copy recorded in the recorder's office aforesaid, shall be evidence in all courts of law and equity of this state.

#### **STATE TAX ON RENEWAL.**

SECTION 131. Upon the renewal of the existence of any corporation it shall pay to the secretary of state, for the use

of the state, a tax of twenty dollars before the delivery of a certified copy of its certificate of renewal by him to it.

### **EFFECT OF RENEWAL.**

SECTION 132. Any corporation, desiring to renew, extend and continue its corporate existence, shall upon complying with the provisions of sections 129, 130 and 131 of this act, and with the provisions of section 2 of article IX of the constitution of this state, be and continue for the time stated, in its certificate of renewal a corporation and shall, in addition to the rights, privileges and immunities conferred by its original charter, possess and enjoy all the benefits of this act, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities by this act imposed on such corporations.

### **POWER TO HOLD STOCK AND SECURITIES OF OTHER CORPORATIONS.**

SECTION 133. Any corporation created under the provisions of this act may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, the shares of the capital stock of, or any bonds, securities or evidence of indebtedness created by any other corporation or corporations of this state or any other state, country, nation or government, and while owner of said stock may exercise all the rights, powers and privileges of ownership including the right to vote thereon.

A corporation may acquire by purchase all the stock of another corporation, and yet the latter may continue a distinct and existing organization, with its own officers and board of directors: *Einstein v. Rochester Gas & Electric Co.*, 146 N. Y. 46.

A corporation may vote shares in another corporation in which it is a stockholder by a proxy duly authorized: *State v. Rohlfss*, 19 Atl. Rep. 1099.

A corporation cannot in its own name subscribe for stock, or be a corporation under the general railroad law; nor can it do so by simulated compliance with the provisions of the law through its agents as pretended

corporators and subscribers for stock: *Central R. R. Co. of N. J. v. Pa. R. R. Co.*, 31 N. J. Eq. 475-494.

A corporation has no power to hold stock in another corporation unless authorized by its charter: *Cook on Stocks, etc.*, section 315.

#### **AMENDMENT OF CERTIFICATE BEFORE PAYMENT OF CAPITAL STOCK.**

SECTION 134. It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to file with the secretary of state, an amended certificate, duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged in the manner in this act required for certificates of incorporation, in this act heretofore provided for, modifying, changing or altering its original certificate of incorporation in whole or in part; said secretary of state shall furnish a certified copy of said certificate under his hand and seal of office, and said certified copy shall be recorded in the office of the recorder of the county in which its original certificate of incorporation was recorded: said amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; provided, however, that nothing herein contained shall permit the insertion of any matter not in conformity with the provisions of this act. For filing any such amended certificate of incorporation the secretary of state shall receive for the use of the state, a tax of twenty dollars, and if the capital stock of the corporation is increased by any such amended certificate he shall receive, as aforesaid, an additional sum of fifteen cents for each one thousand dollars of increase.

#### **AMENDMENT OF CERTIFICATE AFTER ORGANIZATION.**

SECTION 135. Every corporation organized under this act may change the nature of its business, change its name, change the par value of the shares of its capital stock, change the location of its principal office in this state, extend its corpo-



rate existence, create one or more classes of preferred stock, and make such other amendments, change or alteration as may be desired, in manner following:

The board of directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days' notice, given personally or by mail; if two-thirds in interest of each class of the stockholders having voting power shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged by said president and secretary, before any officer authorized by the laws of this state to take acknowledgment of deeds, to be the act, deed and certificate of such corporation. And such certificate acknowledged as aforesaid, together with the assent in person or by proxy, of two-thirds in interest of each class of such stockholders, shall be filed in the office of the secretary of state, and a copy thereof duly certified by the secretary of state shall be recorded in the office of the recorder of the county in which the original certificate of incorporation is recorded, and upon so filing and recording the same, the certificate of incorporation shall be deemed to be amended accordingly; provided that such certificate of amendment, change or alteration shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and the certificate of the secretary of state that such certificate and assent have been filed in his office, the record of the same in the office of the recorder aforesaid, or a copy of said record duly certified by the recorder aforesaid, shall be taken and accepted as evidence of such change or alteration in all courts and places.

All such amendments or changes are subject to the proviso that they shall not lessen or impair the liability of the corpo-

ration, or the stockholders or officers thereof, or the rights or remedies of creditors thereof. (Section 58, ante.)

While it would appear that this section provides for all possible amendments, including apparently the power to increase or decrease the capital stock by the words, "and make such other amendments, change or alteration as may be desired," it should be noted that sections 28 and 33 respectively contain specific provisions for the *increase* and *reduction* of capital stock, which sections together with the above should be carefully followed in making these particular amendments.

There is a possible conflict or inconsistency between this section and section 10, ante; it would seem advisable under this later section to make an amending certificate conform as closely as possible to the original certificate; for example, the certificate of acknowledgment should state that "the facts therein stated are truly set forth," a statement which is not required by section 135, but is required in the original by section 9, ante.

Section 129 provides a method by which "any corporation existing under the laws of this state" may *extend* its corporate existence by the mode therein contained, which is less cumbersome than that provided for by this section.

#### **MEETINGS OF STOCKHOLDERS. MUST MAINTAIN PRINCIPAL OFFICE IN DELAWARE.**

SECTION 136. That in all cases where it is not otherwise provided by the by-laws, the meetings of the stockholders of every corporation in this state shall be held at its principal office in this state; the directors may hold their meetings, and have an office or offices outside of this state, if the by-laws or certificate of incorporation so provide; and every corporation shall maintain a principal office or place of business in this state, and have an agent resident of this state in charge thereof.

See section 17, ante, and notes.

A corporation is deemed a resident of the county where its principal business office is located: *Conroe v. The Nat. Pro. Ins. Co.*, 10 How. Pr. 405; *Rossie Iron Works v. Westbrook*, 36 N. Y. St. Rep. 555.

**KINDS OF STOCK. DIRECTORS' VALUATION OF PROPERTY CONCLUSIVE.**

SECTION 137. Every corporation shall have power to create two or more kinds of stock of such classes, with such designations, preferences and voting powers, or restriction or qualification thereof, as shall be stated and expressed in the certificate of incorporation; and the power to increase or decrease the stock, as in this act elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and place, to be expressed in the certificate thereof; and the holders thereof shall be entitled to receive, and the corporators shall be bound to pay thereon a fixed yearly dividend, to be expressed in the certificate, not exceeding eight per centum payable quarterly, half yearly or yearly, before any dividend shall be set apart or paid on the common stock, and such dividends may be made cumulative; and in no event shall a holder of preferred stock be personally liable for the debts of the corporation; but in case of insolvency its debts or other liabilities shall be paid in preference to the preferred stock,\* unless its original certificate of incorporation shall otherwise provide, no corporation shall create preferred stock, except by authority given to the board of directors by a vote of at least two-thirds of the stock voted at a meeting of the common stockholders, duly called for that purpose; the terms "general stock" and "common stock" are synonymous. When any corporation shall issue stock for labor done or personal property or real estate or leases thereof, in the absence of fraud in the transaction the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.

See section 27, ante, and notes.

The possession of the certificate by the person in whose name it is

\* So punctuated in the original act.

issued creates a legal presumption of rightful ownership, which can only be overcome by proof that it was illegally issued or legally forfeited: *Downing v. Potts*, 23 N. J. Law, 66, 79.

The holding and owning of a share of common stock gives a right which cannot be divested without the assent of the owner and holder, or unless the power so to do has been reserved in some way: *Mech. Bank v. N. Y. & N. H. R. R. Co.*, 13 N. Y. 599.

The vested right of a holder of common stock cannot be taken from him without his consent: *Hayes v. Commonwealth*, 82 Penn. St. Rep. 518.

The intention of the legislature is to divide stock into classes:

First, common or general without preferences of any kind.

Second, stock with preferences.

Stock of the last class may be of various kinds, may be preferred as to dividends, as to capital (either or both) or otherwise. Such stock may have a restriction or qualification of voting powers. The power to vote may be wholly taken from any class of stock: *Miller v. Ratterman*, 24 N. E. Rep. 496 (Ohio, 1890).

This stock with preferences may have any name and designation that the stockholders see fit to give to it. The restriction in the statute means that every company must always have at least one-third of the stock issued and outstanding, full paid common stock.

The terms of these preferences and qualifications and restrictions must be stated in the certificate of incorporation, and it is wise to insert them as well in the certificates of stock in order that there may be no question about the holder's having full notice of the terms, conditions and limitations of the stock.

One more suggestion is pertinent. All preferences as to dividends and guarantees of dividends are contingent; they must be made payable only out of the net profits of the company and can be paid in no other way.

They are not a debt of the company to the stockholders until after the net profit has been made and the surplus arising therefrom is in hand and applicable to the payment of dividends.

See Dill's Private Companies.

*"In the absence of fraud in the transaction the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive."*

To the extent to which these words protect holders of stock issued for labor done or property purchased, the law of Delaware is different from that of other states.

In making the judgment of the directors as to the value of the property purchased conclusive the question of the value of the property for which the stock was issued is removed as an element of danger to the stockholders, except so far as gross over-valuation is evidence of fraud in the transaction.

The precise meaning of the words above quoted has not yet been passed upon by the courts.

It is thought that the statute protects the stockholder from many of the attacks which may be made upon him under the statutes of other states, notably that of the state of Maine, where a judgment creditor of the corporation recovered in an action at law against a stockholder upon the theory that his subscription was unpaid, the finding of fact being that the property was not of the value for which the stock was issued: *Libby v. Tobey*, 19 Atl. Rep. 904.

Commenting upon this decision Mr. Cook says: "Maine formerly was a resort for incorporations, but a recent decision of her highest court, holding stockholders liable on stock which has been issued for property where the court thought the property was not worth the par value of the stock, makes Maine too dangerous a state to incorporate in, especially where millions of dollars of stock are to be issued for mines, patents, and other choice assortments of property:" *Cook on Stock and Stockholders*, section 935.

It may be safely asserted that holders of stock in Delaware corporations issued for property purchased or labor done cannot be held liable on any such grounds, in the absence of fraud in the transaction.

In New Jersey it is held that "To justify a corporation in issuing stock under our act for property purchased, there should be an approximation at least in true value of the thing purchased to the amount of the stock which it is supposed it represents:" *Edgerton v. Electric Improvement, etc., Co.*, 50 N. J. Eq. 354. Decided in 1892.

See also *Rural Homestead Co. v. Wildes*, 54 N. J. Eq. 668. Also *Meredith et al. v. N. J. Zinc & Iron Co.*, 37 Atl. Rep. 539.

The good-will of a business is property, and stock may be issued for it. And one who participated in and approved the method of valuation of such good-will cannot afterwards claim that the good-will so bought by the corporation was overvalued: *Washburn v. Natl. Wall Paper Co.*, 81 Fed. Rep. 17.

Lord Chancellor Cairns says:

"I do not say that the owner of property might not promote and form a joint stock company and then sell his property to it, but I do say that if he does he is bound to take care that he sells it to the company through the medium of a board of directors, who can and do exercise an independent and intelligent judgment on the transaction, and who are not left under the belief that the property belongs, not to the promoters, but to some other persons:" *Erlanger v. New Sombrero Phosphate Co.*, 3 App. Cas. 1218, 1236; s. c. 6. English Ruling Cases, p. 777.

In New Jersey again the earlier cases held that the contract of the subscribers could only be fulfilled by payment in money. In later cases this doctrine has been relaxed, and stock issued and paid up in work and labor, or in the purchase of property the corporation is authorized to hold, has been held to have been legally issued: *Wetherbee v. Baker*, 35 N. J. Eq. 501, 512.

In the case of *Franklin Coit, Admr., v. North Carolina Gold Amalgamating Co. et al.*, an action was brought by a judgment creditor of a corporation to compel stockholders to pay what was claimed to be due on the shares held by them, it was held: That, where the charter authorized capital stock to be paid in property, and the shareholders honestly and in good faith put in property, instead of money, in payment of their subscriptions, third parties have no ground of complaint. Mr. Justice Field in delivering the opinion of the court says: "The plaintiff contends, and it is the principal basis of his suit, that the valuation thus put upon the property was illegally and fraudulently made at an amount far above its actual value; averring that the property consisted only of a machine for crushing ores, the right to use a patent called the Crosby process, and the charter of the proposed organization; that the articles had no market or actual value and therefore, that the capital stock issued thereon was not fully paid, or paid to any substantial extent, and that the holders thereof were still liable to the corporation and its creditors for the unpaid subscription.

"If it were proved that actual fraud was committed in the payment of the stock, and that the complainant had given credit to the company from a belief that its stock was fully paid, there would undoubtedly be sufficient ground for the relief asked. But where the charter authorizes capital stock to be paid in property, and the shareholders honestly and in good faith put in property instead of money, in payment of their subscriptions, third parties have no ground of complaint. The case is very different from that in which subscriptions to stock are payable in cash, and where only a part of the instalments has been paid. In that case there is still a debt due to the corporation, which, if it become insolvent, may be sequestered in equity by the creditors, as a trust fund liable to the payment of their debts. But where full paid stock is issued for property received there must be actual fraud in the transaction, to enable creditors of the corpora-

tion to call the stockholders to account. A gross and obvious over-valuation of property would be strong evidence of fraud:" 119 U. S. 343.

See also *Boynton v. Hatch*, 47 N. Y. 225; *Van Cott v. Van Brunt*, 82 N. Y. 535; *Carr v. Le Fevre*, 27 Penna. State. 413; *Fogg v. Blair*, 139 U. S. 118; *Liebke v. Knapp*, 79 Mo. 22.

Where a mining and manufacturing corporation was organized under the New Jersey corporation act of 1875, which provides for the purchase of property with stock, such provision became a part of the contract between the stockholders; and where new stock was issued for the purchase of mines, which will become a part of the common property from which all stockholders will receive the same benefit, original holders cannot insist that the new stock shall be issued to them in the proportion their holdings bear to the whole amount of stock before the increase: *Meredith v. New Jersey Z. & I. Co.*, 37 Atl. Rep. 539.

#### **AMENDMENTS TO PRE-EXISTING CORPORATIONS.**

SECTION 138. Any corporation of this state existing at the time this act becomes a law, whether created by special act of the legislature or general law, may change the nature of its business, be permitted to hold real and personal property of a greater or less amount in value, increase or decrease its capital stock, change its name, change the par value of the shares of its capital stock, change the location of its principal office or place of business in this state, and fix any method of altering its by-laws permitted by any law of this state, in the manner prescribed in section 135 of this act, and any corporation may in the same manner relinquish one or more branches of its business or extend its business to such branches as might have been inserted in its original charter or certificate of incorporation, not contrary to the laws of this state.

See section 58, ante.

It was doubtless the intention of the legislature by this section to give this power of amendment to all pre-existing corporations, with or without a capital stock, but difficulty arises in the reference to section 135, which furnishes the *modus operandi* for obtaining the amendments authorized by this section, in that the proposed amendments must, by sec-

tion 135, be ratified by two-thirds in interest of the *stockholders*.

Can, therefore, a pre-existing non-stock corporation amend its charter?

It is probable that such power of amendment would be upheld by the courts on the ground that this section confers without qualification the *right* to such amendments, while section 135 merely points out the *method of effectuating* such right.

Being in the nature of a guide-post for this section, therefore, section 135 is to be followed exactly where it is applicable, but in other cases, only generally and by analogy.

It would hardly be held to *defeat* a right granted by this section.

#### INCONSISTENT LAWS REPEALED.

SECTION 139. All laws or parts of laws inconsistent with the provisions of this act, are hereby repealed; provided, however, that all rights, privileges and immunities vested or accrued by and under prior laws, all suits pending, all rights of action conferred, and all duties, restrictions, liabilities and penalties imposed or required by and under laws prior hereto shall not be impaired, diminished or affected hereby.

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#### FRANCHISE TAX.

An Act to Raise Revenue for the State by Taxing Certain Corporations.

APPROVED MARCH 10, 1899.

SECTION 1. That every telegraph, telephone, cable or electric light company, or company organized for the distribution of electricity, heat or power, or organized for the purpose of producing or distributing steam, heat or power, every express company, not owned by a railroad company and not otherwise taxed, every company organized for the purpose of the production, distribution, or sale of gas, every parlor,



palace, or sleeping car company, every oil or pipe line company, every life insurance company, every fire, marine, live stock, casualty or accident insurance company, except mutual fire insurance companies which do not issue policies on the stock plan, hereafter incorporated under the laws of this state, shall pay an annual tax, for the use of the state by way of a license for its corporate franchise as hereinafter mentioned; provided, however, that no company or society shall be construed to be a life insurance company within the purview of this act, which, by its certificate of incorporation shall have for its object, the assistance of sick, needy or disabled members, the defraying of funeral expenses of deceased members, or to provide for the wants of the widows and families of members after death.

#### **ANNUAL REPORT OF CORPORATIONS.**

SECTION 2. That on or before the first Tuesday of January next and annually thereafter, it shall be the duty of the president, treasurer or other proper officer of every corporation hereafter incorporated of the character specified in the preceding section, to make report to the secretary of state, stating specifically the following particulars, namely: Each telegraph, telephone, cable or express company not owned by a railroad company and not otherwise taxed, shall state the gross amount of its receipts from business done in this state for the year preceding the making such report; each gas company and electric light company shall state the amount of its receipts for light or power supplied within this state for the year preceding the making of each report. and the amount of dividends declared or paid during the same time; each company organized for the distribution of heat or power or organized for the purpose of producing or distributing steam, heat or power, shall state the amount of its receipts for the distribution of heat or power, or for the production or distribution of steam, heat or power within this state for the year preceding the making of such report. and

the amount of dividends declared or paid during the same time; each parlor, palace or sleeping car company shall state the gross amount of its receipts for fare or tolls for transportation of passengers within this state during the same time; each oil or pipe line company engaged in the transportation of oil or crude petroleum shall state the gross amount of its receipts from the transportation of oil or petroleum through its pipes or in and by its tanks or cars in this state during the same time; each fire, marine, live stock, casualty or accident insurance company shall state the total amount of premiums received by it for insurance upon the lives of persons resident or property located within this state, during the same time.

**PENALTY FOR FALSE STATEMENT, OR FOR NEGLECT TO  
MAKE STATEMENT.**

SECTION 3. If any officer of any corporation required by this act to make a return to the secretary of state, shall, in such return, make any false statement, he shall be deemed guilty of perjury; if any such corporation shall neglect or refuse to make such return within the time limited as aforesaid the secretary of state shall ascertain and fix the amount of the annual license fee or franchise tax, and the basis upon which the same is determined, in such manner as may be deemed by him most practicable, and the amount so fixed by him shall stand as such basis of taxation under this act.

**RATE OF TAX.**

SECTION 4. That each telegraph, telephone, cable, and express corporation shall pay to the state treasurer for the use of the state, an annual license fee or franchise tax at the rate of one per centum upon the gross amount of its receipts so returned or ascertained; that each corporation organized for the distribution of electricity, heat or power, or organized for the purpose of producing or distributing steam, heat or power, or organized for the purpose of the production, distribution or sale of gas shall pay to the state treasurer, for the

use of the state, annual license fee or franchise tax at the rate of two-fifths of one per centum upon the gross amount of its receipts so returned or ascertained, and four per centum upon the dividends in excess of four per centum so paid or declared by any such corporation; that each oil or pipe line corporation shall pay to the state treasurer, for the use of the state, an annual license fee or franchise tax at the rate of three-fifths of one per centum upon the gross amount of its receipts so returned or ascertained; that each insurance company other than life shall pay to the state treasurer for the use of the state, an annual license fee or franchise tax at the rate of three-fourths of one per centum upon the gross amount of its premiums so returned or ascertained; that each life insurance company shall pay to the state treasurer, for the use of the state, annual license fee or franchise tax of three-fourths of one per centum upon the amount of its surplus on the thirty-first day of December next preceding as fixed by section 5 of this act, and in addition thereto, a further annual license fee or franchise tax of thirty-one hundredths of one per centum upon the total gross insurance premiums collected by such companies during the year ending the thirty-first of December next preceding. The insurance commissioner of this state shall ascertain and report to the secretary of state all facts necessary to enable the said secretary of state to ascertain and fix the amount of taxation to be paid by life insurance companies under this act, and shall also certify to each of said companies the amount of such taxation under this act; that each parlor, palace, or sleeping car corporation shall pay to the state treasurer, for the use of the state an annual license fee or franchise tax at the rate of one and one-half per centum upon the gross amount of its receipts so returned or ascertained; if any oil or pipe line corporation has part of its transportation line in this state and part thereof in another state or other states, such corporation shall return a statement of its gross receipts for transportation of oil or petroleum over its whole line, together with a statement of

the whole length of its line, and the length of its line in this state; such corporation shall pay an annual license fee or franchise tax to the state treasurer, for the use of the state, at the aforesaid rate upon such proportion of its said gross receipts as the length of its line in this state bears to the whole length of its line; that all other corporations hereafter incorporated under the laws of this state, and not hereinbefore provided for shall make, on or before the first Tuesday of January next, and annually thereafter, return to the secretary of state of such information as may be required by him to carry out the provisions of this act, and shall pay an annual license fee or franchise tax of one-twentieth of one per centum on all amounts of capital stock issued and outstanding up to and including the sum of three million dollars; on all sums of capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, an annual license fee or franchise tax of one-fortieth of one per centum and the further sum of thirty dollars per annum per one million dollars or any part thereof, on all amounts of capital stock, issued and outstanding in excess of five million dollars; provided, that this act shall not apply to railroad, railway, canal or banking corporations or to savings banks, cemeteries or religious corporations, or to purely charitable or educational associations or manufacturing or mining corporations, at least fifty per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this state; if any manufacturing or mining company, carrying on business in this state, shall have less than fifty per centum of its capital stock issued and outstanding, invested in business carried on within this state such company shall pay the annual license fee or franchise tax herein provided for companies not carrying on business in this state, but shall be entitled in the computation of such tax, to a deduction from the amount of its capital stock issued and outstanding of the assessed value of its real and personal estate so used in manufacturing or mining.

**CERTIFICATE OF SECRETARY OF STATE TO TREASURER.**

SECTION 5. That the secretary of state shall certify and report to the state treasurer, on or before the first Tuesday of February in each year, a statement of the basis of the annual license fee or franchise tax as returned by each corporation or company to or [to] be ascertained by the said secretary of state, and the amount of tax due thereon respectively, at the rate fixed by this act; such tax shall thereafter become due and payable and it shall be the duty of the state treasurer to receive the same; if the tax of any corporation or company remains unpaid on the first day of March after the same becomes due the same shall thenceforth bear interest at the rate of one per centum for each month until paid; the secretary of state shall have power to require of any corporation or company subject to tax under this act such information or reports touching the affairs of such corporation or company as may be necessary to carry out the provisions of this act; and may require the production of the books of any such corporation or company, and may swear or affirm and examine witnesses in relation thereto.

**TAX TO BE A DEBT.**

SECTION 6. That such tax when determined shall be a debt due from such corporation or company to the state, for which an action at law may be maintained after the same shall have been in arrears for the period of one month, such tax shall also be a preferred debt in case of insolvency.

**REMEDIES FOR COLLECTION OF TAX.**

SECTION 7. That in addition to other remedies for the collection of such tax it shall be lawful for the attorney-general, either of his own motion or upon request of the state treasurer, whenever any tax due under this act from any corporation or company shall have remained in arrears for a period of three months after the same shall have become payable, to apply to the court of chancery, by petition in the name of

the state, on five days' notice to such corporation or company, which notice may be served in such manner as the chancellor may direct for an injunction to restrain such corporation or company from the exercise of any franchise, or the transaction of any business within this state until the payment of such tax and interest due thereon and the cost of such application shall be fixed by the chancellor; the said court is hereby authorized to grant such injunction, if a proper case appears and upon the granting and service of such injunction, it shall not be lawful for any such corporation or company thereafter to exercise any franchise or transact any business in this state until such injunction shall be dissolved.

#### **FOREIGN FIRE INSURANCE COMPANIES EXEMPT.**

SECTION 8. That this act shall not apply to or in any manner affect the tax upon the premiums obtained in this state by foreign fire insurance companies and their agents, which tax shall be in lieu of the tax herein provided and shall be collected and distributed as is specially provided by law in relation thereto.

#### **RETALIATORY TAXATION.**

SECTION 9. When, by the laws of any other state or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this state, doing business in such other state or nation, or upon their agents therein, than the laws of this state impose upon their corporations or agents doing business in this state, so long as such laws continue in force in such foreign state or nation, the same taxes, fines, penalties, licenses, fees, obligations and requirements, of whatever kind shall be imposed upon all corporations of such other state or nation doing business within this state and upon their agents here; provided, that nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other states or nations transacting business in the state.

**CHARTER VOID BY FAILURE TO PAY TAXES.**

SECTION 10. If any corporation hereafter created shall for two consecutive years neglect or refuse to pay the state any tax which has been or shall be assessed against it, or which it is required to pay, under any law of this state and made payable into the state treasury, the charter of such corporation shall be void, and all powers conferred by law upon such corporations are hereby declared inoperative and void, unless the governor shall, for good cause shown to him, give further time for the payment of such taxes, in which case a certificate thereof shall be filed by the governor in the office of the state treasurer, stating the reasons therefor.

**REPORT OF STATE TREASURER. GOVERNOR'S PROCLAMATION VOIDING CHARTER.**

SECTION 11. On or before the first Tuesday of January in each year the state treasurer shall report to the governor a list of all the corporations or companies which for two years next preceding such report have failed, neglected or refused to pay the taxes assessed against them or due by them, under the law of this state, and the governor shall forthwith issue his proclamation, declaring under this act of the legislature that the charters of these corporations are repealed.

**PROCLAMATION TO BE FILED AND PUBLISHED.**

SECTION 12. The proclamation of the governor shall be filed in the office of the secretary of state, and published in such newspapers and for such length of time as the governor shall designate.

**PENALTY FOR ACTING UNDER VOID CHARTER.**

SECTION 13. Any person or persons who shall exercise or attempt to exercise any powers under the charter of any such corporation after the issuing of such proclamation shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or a fine not ex-

ceeding one thousand dollars, or both, in the discretion of the court.

#### **OTHER REMEDIES FOR COLLECTION OF TAXES.**

SECTION 14. After any corporation of this state hereafter incorporated has failed and neglected for the space of two consecutive years to pay the taxes imposed on it by law, and the state treasurer of this state shall have reported such corporation to the governor of this state, as provided in this act, then it shall be lawful for the attorney-general of this state to proceed against said corporation in the court of chancery of this state for the appointment of a receiver, or otherwise, and the said court in such proceeding shall ascertain the amount of the taxes remaining due and unpaid by such corporation to the state of Delaware, and shall enter a final decree for the amount so ascertained, and thereupon a fieri facias or other process shall issue for the collection of the same as other debts are collected, and if no property which may be seized and sold on fieri facias shall be found within the said state of Delaware, sufficient to pay such decree, the said court shall further order and decree that the said corporation, within ten days from and after the service of notice of such decree upon any officer of said corporation upon whom service of process may be lawfully made, or such notice as the court shall direct, shall assign and transfer to the trustees or receiver appointed by the court, any chose in action, or any patent or patents, or any assignment of, or license under any patented invention or inventions owned by, leased or licensed to or controlled in whole or in part by said corporation, to be sold by said receiver or trustee for the satisfaction of such decree, and no injunction theretofore issued nor any forfeiture of the charter of any such corporation shall be held to exempt such corporation from compliance with such order of the court; and if the said corporation shall neglect or refuse within ten days from and after the service of such notice of such decree to assign and transfer the same



to such receiver or trustee for sale as aforesaid, it shall be the duty of said court to appoint a trustee to make the assignment of the same, in the name and on behalf of such corporation, to the receiver or trustee appointed to make such sale, and the said receiver or trustee shall thereupon, after such notice and in such manner as required for the sale under fieri facias of personal property, sell the same to the highest bidder, and the said receiver or trustee, upon the payment of the purchase money, shall execute and deliver to such purchaser an assignment and transfer of all the patents and interests of the corporation so sold, which assignment or transfer shall vest in the purchaser a valid title to all the right, title and interest whatsoever of the said corporation therein, and the proceeds of such sale shall be applied to the payment of such unpaid taxes, together with the costs of said proceedings.

#### **PROCLAMATION OF GOVERNOR CORRECTING MISTAKE.**

SECTION 15. Whenever it is established to the satisfaction of the governor that any corporation named in said proclamation has not neglected or refused to pay said tax within two consecutive years, or has been inadvertently reported to the governor by the state treasurer as refusing or neglecting to pay the same as aforesaid, that the governor be and he is hereby authorized to correct such mistake, and to make the same known by filing his proclamation to that effect in the office of the secretary of state.

#### **RESTORATION OF CHARTER.**

SECTION 16. If the charter of any corporation hereafter created shall become inoperative or void by proclamation of the governor, or by operation of law, for non-payment of taxes the governor, by and with the advice of the attorney-general, may, at any time within two years thereafter, or after the default in the payment of such taxes, upon payment by said corporation to the secretary of state of such sum in lieu of taxes and penalties as to them may seem reasonable,

but in no case to be less than the fees required as upon the filing of the original certificate of incorporation, permit such corporation to be reinstated and entitled to all its franchises and privileges, and upon such payment as aforesaid the secretary of state shall issue his certificate entitling such corporation to continue in said business and its said franchises.

Nothing in this section contained shall relieve said corporation from penalty of forfeiture of franchises in case of failure to pay future taxes imposed as in this act provided.

### **REVIEW OF ASSESSMENT.**

SECTION 17. The officers of any corporation who shall consider the tax levied under the provisions of this act excessive or otherwise unjust, may make application to the governor for a review of the assessment and a readjustment of the tax; provided, there be filed with the governor within three months from the date of assessment a petition of appeal, duly verified according to law, stating specifically the grounds upon which the appeal is taken and the reasons why the tax is considered excessive or unjust; the governor shall thereupon proceed to investigate the contentions raised by the said petition of appeal; and for the purpose of such hearing, the officers of said corporation may be summoned to appear before the governor, either in person or by attorney, and questioned as to the statements set forth in the said petition of appeal; if, in the opinion of the governor it shall appear that the tax so levied as aforesaid is excessive or unjust, he shall thereupon require the officers of the corporation to file with him a corrected return, and upon said corrected return the assessment shall be adjusted and the tax reduced or amended as in the opinion of the governor shall seem proper.

If the petition of appeal shall not be filed within three months from the date of the assessment, as aforesaid, the right to appeal to the governor shall be considered and treated as having been waived and the amount of tax levied shall be payable and collectible at once.

**COMPENSATION OF SECRETARY OF STATE.**

SECTION 18. That the secretary of state shall receive for the services required of him under the provisions of this act the sum of five hundred dollars, to be paid to him annually in addition to the salary and fees now provided by law.

**PRE-EXISTING CORPORATIONS EXEMPT FROM TAX.**

SECTION 19. That the provisions of this act shall not apply to corporations heretofore incorporated and the property of such corporations is hereby made exempt from taxation under the provisions of this act, such exemption, in the opinion of the general assembly, being best to promote the public welfare.

**FRANCHISE TAX.**

The franchise tax on corporations as laid by the legislature of the state of Delaware follows very closely the franchise tax of the state of New Jersey.

Article VIII, section 1, of the state constitution, reads: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, but the general assembly may by general laws exempt from taxation such property as in the opinion of the general assembly will best promote the public welfare."

This constitutional provision insures the uniformity of taxes upon each class of corporations, and prevents the legislature from passing a law laying special taxes upon any corporation to its detriment, or in favor of any other corporation in the same class.

The tax is computed upon the basis of the capital stock issued and outstanding, and it is held that stock is issued when the company has received and accepted subscriptions for the same, whether paid for or not: *American Pig Iron, etc., Co. v. Assessors*, 56 N. J. Law, 389.

As long as the corporation continues it is liable for this franchise tax. It continues after a receiver is appointed and until the dissolution of the company: *Kirkpatrick v. Assessors*, 57 N. J. Law, 53.

The fact that the company has ceased to do business and to use its franchise, even though compelled so to do by the decree of the court enjoining the company from using certain patents which form the basis of the company's business, does not relieve it from the duty to pay the

franchise tax. If it wishes to withdraw from active business, it must, to escape taxation, take proceedings to dissolve in the manner prescribed by law. In case of failure to pay such tax the act provides that proceedings may be instituted by the attorney-general to enjoin the company from exercising its franchises until such tax is paid: *Edison Phonograph Co. v. Assessors*, 55 N. J. Law, 55; *Electro-Pneumatic Transit Co.'s Case*, 51 N. J. Eq. 71.

When a "proper case" is presented, the Court of Chancery has no discretion but must issue the injunction: *Electro-Pneumatic Transit Co.'s Case*, 51 N. J. Eq. 71.

When the increase in capital stock distributed among the stockholders according to their respective holdings of stock represents net earnings; or when a corporation increases its capital and plant and the basis of its payment of dividends without any direct or stock dividend, it is nevertheless subject to be taxed on the increase as upon the dividend: *Commonwealth v. Cleveland, Painesville & Ashtabula R. R. Co.*, 29 Pa. St. Rep. 370; *Lehigh Crane Iron Co. v. Commonwealth*, 55 Ib. 448.

To exempt a manufacturing corporation from tax it would seem:

(1) That it has actually located its factory within the state of Delaware and is engaged in the business of manufacturing under its charter therein.

(2) That at least fifty per cent. of its capital stock is invested in such manufacturing business carried on within the state.

(3) If capital stock has been issued for patents or patent rights, that such patents or patent rights are necessary for the manufacture in Delaware.

*Edison Phonograph Co. v. Assessors*, 54 N. J. Law, 430; *Edison U. P. Co. v. Assessors*, 57 N. J. Law, 520; *Norton Construction Co. v. Assessors*, 53 N. J. Law, 564.

The term "capital stock," as used in this act, refers to the capital stock authorized by the charter of a corporation and subscribed or raised by its stockholders, on which it pays dividends, and which it is obliged to maintain intact, not the surplus or undivided profits, however invested, which it can at any time turn into money and divide among its stockholders: *People ex rel. Singer Mfg. Co. v. Wemple*, 78 Hun, 63.

The tax is levied on the amount of stock issued and outstanding as a fixed factor, without regard to the purpose for which it was issued, or whether issued for value or not: *Am. Pig Iron Co. v. Assessors*, 27 Vr. 389. All stock subscribed for is considered issued: *Ib.*

What is manufacturing within the meaning of the act?—As pointed out above, it is what the company actually does, and not what it is authorized by its charter to do, that determines whether a company is engaged in

manufacturing carried on in this state. In construing the statute the court will give the word "manufacturing" its popular sense. Therefore, it was held that printing and publishing a newspaper is not manufacturing, but that where a company is incorporated "to conduct and prosecute the business of book printing and job printing, engraving, electrotyping and lithographing," and its capital is invested in the prosecution of that business, and it manufactures on orders only, it is a manufacturing company within the meaning of the statute: *Evening Journal Association v. State Board of Assessors*, 47 N. J. Law, 36; *Printing Co. v. Assessors*, 51 N. J. Law, 75.

The collection, storage, preparation for market and transportation of ice is not a manufacture, but the production of ice by artificial means is: *People v. Knickerbocker Ice Co.*, 99 N. Y. 181. The mere appropriation of an article which is furnished by nature is not a manufacture. Thus, the liberation of natural gas or oil from the earth, and its transportation to consumer, is not a manufacture: *Commonwealth v. Northern Elec. Lt. & Power Co.* 145 Pa. St. Rep. 117. A company engaged in finishing and shaping material so as to make bridges and selling and erecting the same, held to be manufacturing: *Commonwealth v. Keystone Bridge Co.*, 156 Pa. St. 500.

In a case relative to the payment of excise duties in Great Britain it was held that a printer of calicoes was not a manufacturer: *The King v. Tregoning*, 2 Younge & Jervis, 132.

The United States circuit court has held that cutting grass and converting it into hay, pressing it in bales and transporting it to market did not result in the production of a manufactured article: *Frazee v. Moffit*, 20 Blatchford Cir. Ct. Rep. 267.

The printing, publishing and selling of books, and job printing, constitute a manufacturing business: *People ex rel. Frederick A. Stokes Co. v. Roberts*, 90 Hun, 533; *Press Printing Co. v. State Bd. of Assessors*, 51 N. J. Law Repts. 75; *Evening Journal Assn. v. State Bd. of Assessors*, 47 N. J. L. Repts. 36.

The courts have decided that the exemption in favor of manufacturing corporations applies only to such corporations as create some new and artificial product within the state: *People ex rel. Brush El. Mfg. Co. v. Wemple*, 129 N. Y. 543; *People ex rel. Edison El. Ill. Co. v. Wemple*, 129 N. Y. 664; *People v. Horn Silver Mining Co.*, 105 N. Y. 76; *People v. Knickerbocker Ice Co.*, 99 N. Y. 181; *People v. N. Y. F. Dock Co.*, 92 N. Y. 487.

The process of manufacture is supposed to produce some new article by the application of skill and labor to the raw material: *People v. Roberts*, 145 N. Y. 375.

A domestic corporation engaged in slaughtering cattle, preparing the same and the various products thereof for market, a portion of which business is carried on in this state and a portion elsewhere, is not wholly engaged in manufacturing in New York state: *People ex rel. Schwarzschild & Sulzberger Co. v. Roberts*, 11 App. Div. 449.

The business of refining crude petroleum is manufacturing: *Commonwealth v. Atlantic Ref. Co.* 2 Pa. Co. Ct. Rep. 62.

Dyeing and finishing cotton goods is manufacturing: *Commonwealth v. Quaker City Dye Works*, 5 Pa. Co. Ct. Rep. 94.

Printing and publishing a newspaper is not manufacturing: *Press Printing Co. v. State Bd. of Assessors*, 51 N. J. Law Repts. 75; *Evening Journal Assn.*, 47 Ib. 36.

A cooper who makes barrels, hogsheads and similar articles of woods, such as coopers usually make, is a manufacturer: *New Orleans v. Le Blanc*, 34 La. Ann. 596.

A foreign corporation claiming exemption as a manufacturing corporation must show that some substantial portion of its manufacturing is carried on in this state: *People ex rel. Roebbling's Sons Co. v. Wemple*, 63 Hun. 452; *aff'd* 138 N. Y. 582.

A corporation engaged in the sale of spices, baking powder, coffee and tea, purchased these articles in bulk. The spices and baking powder were merely put up in packages and sold. Various kinds of tea were mixed and sold as "combination tea." The coffee was roasted and ground. Held, that this was not manufacture, and the corporation was not exempt from taxation as a manufacturing corporation: *People ex rel. Union Pacific Tea Co. v. Roberts*, 145 N. Y. 375.

A manufacturing corporation employed in other business is liable to taxation upon so much of its capital stock only as is not employed in strictly manufacturing operations: *Commonwealth v. Lackawanna Iron & Coal Co.*, 129 Pa. St. Rep. 346.

Where a certificate of incorporation definitely states the location of the principal office of the company and adds a clause, "or at such other place as the stockholders of the company might determine," the additional clause has no force, touching the residence of the corporation for the purposes of taxation, and must be treated as surplusage: *People ex rel. Edison Electric Light Co. v. Barker*, 91 Hun. 594.

The residence of a corporation for the purposes of taxation cannot be inferred from the mere place of filing its certificate of incorporation. When the law under which it was formed does not fix its residence or require the location of its principal office to be stated in the certificate, its residence is deemed to be where its principal place of business is actually situated: *Austen v. Hudson River Telephone Co.* 73 Hun. 96; *Austen v. Westchester Telephone Co.* 8 Misc. R. 11; *Oswego Starch Factory v. Dolloway*, 21 N. Y. 454; *Conroe v. Natl. Protection Ins. Co.* 10 How. Pr. 403; *Hubbard v. Same*, 11 Ib. 149.

When a law under which a corporation is organized requires the certificate of incorporation to state the location of the principal office, and such location is stated in the certificate, the statement is conclusive evidence of the residence of the corporation for the purposes of taxation: *Austen v. Hudson Riv. Telephone Co.* 73 Hun. 96; *Western Transportation Co. v. Scheu*, 19 N. Y. 408; *Oswego Starch Factory v. Dolloway*, 21 Ib. 449; *Chesebrough Mfg. Co. v. Coleman*, 44 Hun. 545; *Union Steamboat Co. v. Buffalo*, 82 N. Y. 351.

**FORFEITURE FOR NON-PAYMENT OF TAXES.**

It may well be questioned under section 1, article IX, of the constitution, whether the non-payment of state taxes within two consecutive years is such an "abuse, misuse or non-user of the corporate powers, privileges or franchises" as to furnish a ground for the revocation or forfeiture of a corporate charter.

But aside from such question the constitutional provision is plain that "any proceeding for such revocation or forfeiture shall be taken by the attorney-general as may be provided by law."

This evidently contemplates a forfeiture or revocation only by a proper proceeding before a judicial tribunal; the forfeiture should be determined as other facts are judicially determined in the regular and legal method by a competent court after granting a hearing to both parties, *and such forfeiture proceeding shall be taken only by the attorney-general.*

Section 11 of this act, providing for a forfeiture of corporate charters for the non-payment of taxes by the *governor* of the state, by a summary proceeding, is clearly in contravention of the state constitution: article IX, section 1.

**FOREIGN CORPORATIONS DOING BUSINESS IN THIS STATE.**

All foreign corporations (except fire insurance companies) before doing business in this state by branch offices, agents or representatives, are required to file in the office of the secretary of state, certified copies of their charters, and the names of their authorized agents in this state, together with a sworn statement of their assets and liabilities, and must pay the secretary of state for the use of the state fifty dollars: violations being punished by a fine not exceeding one thousand dollars: 19 Del. Laws, Ch. 703.

A later statute provides that in addition to the preceding requirements foreign corporations must file certificates in the offices of the prothonotaries of the superior court in each of the counties of this state, designating the name and residence of some person or agent within the state upon whom service of process may be made: 20 Del. Laws, Ch. 513.



# FORMS AND PRECEDENTS.

## BEFORE ORGANIZATION.

### Form 1.

#### SUBSCRIPTION AGREEMENT BEFORE ORGANIZATION.

Whereas, The organization is contemplated of a corporation under an act of the legislature of the state of Delaware, entitled "An act providing a general corporation law," to be known as the (insert name of company), or by such other name as may be selected, with a capital stock of not less than \$ (state amount of capital authorized) for the purpose of (state in detail the business proposed to be carried on by the company), and it is desired by the undersigned to become a shareholder in the said corporation:

Now, therefore (insert name of subscriber), the undersigned, does hereby promise and agree to, and with (insert name of promoter or person organizing the corporation) of , in consideration of the promises of the said (subscriber) hereinafter stated, that he will pay to the said (promoter) or to any person or corporation to whom he may assign this agreement, on demand, the sum of dollars, being the subscription price of shares of the capital stock of the said corporation, or such part thereof as may be called for. The stock thus paid for to be delivered at the earliest possible moment after the organization of the company, and meanwhile proper receipts or scrip to be issued to the undersigned.

This agreement is conditioned upon the procuring by the said (promoter) of other bona fide subscriptions, aggregating in all not less than \$ , to the capital stock of the said corporation.

The said (promoter) on his part, in consideration of the foregoing, promises to use his best endeavors to obtain such amount of subscriptions, and his best efforts to perfect the organization of the said corporation.

Witness our hands and seals, this day of , 1 .

### Form 2.

#### FORM FOR CHARTER.

Certificate of incorporation of the company (incorporated).  
Registered with the Trust Company, Wilmington, Del.

1. The name of the corporation is the
2. The location of its principal office is Wilmington, Delaware, and said office is to be registered with the Trust Company.

3. The objects and purposes for which, and for any of which, the corporation is formed, are:

In furtherance of, and not in limitation of, the general powers conferred by the laws of the state of Delaware, it is hereby expressly provided that the company shall have also the following powers.

To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

To manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description.

To acquire the good will, rights and property, and to undertake the whole or any part of the assets and liabilities, of any person, firm, association or corporation, and to pay for the same in cash, stock of this company, bonds or otherwise.

To apply for, purchase, or otherwise acquire, and to hold, own, use, operate, and to sell, assign, or to otherwise dispose of, to grant licenses in respect of or otherwise turn to account any and all inventions, improvements and processes used in connection with, or secured under, letters-patent of the United States or elsewhere, or otherwise, and with a view to the working and development of the same to carry on any business, whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants, bonds, debentures and other negotiable or transferable instruments.

To have one or more offices, to carry on all or any of its operations and business, and without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property of every class and description, in any state, district, territory or colony of the United States, and in any foreign country or place.

In general to carry on any other business in connection therewith, whether manufacturing or otherwise, and with all the powers conferred by the laws of Delaware upon corporations under the act hereinafter referred to.

The duration of the corporation shall be unlimited.

4. The total authorized capital stock of this corporation is dollars (\$) divided into ( ) shares of dollars (\$) each.

5. The names and residences of the incorporators and the number of shares subscribed for by each, the aggregate of which (\$) is the amount of capital with which the company will commence business, are as follows:

| Name. | Residence. | Number of Shares. |
|-------|------------|-------------------|
|-------|------------|-------------------|

6. This corporation is to have perpetual existence.

The affairs of this corporation are to be conducted by its directors, who shall be elected annually on the \_\_\_\_\_ in \_\_\_\_\_ in each year at the \_\_\_\_\_ office of the company in \_\_\_\_\_; said directors shall appoint or elect such officers as the by-laws may prescribe.

This corporation may become seized and possessed of real and personal estate of the value of \_\_\_\_\_ dollars.

The highest amount of indebtedness or liability which this corporation may at any time incur is the sum of \_\_\_\_\_ dollars.

The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

7. The board of directors shall have power without the assent or vote of the stockholders to make, alter, amend and rescind the by-laws of this corporation, to fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens without limit as to amount upon the real and personal property of this corporation.

With the consent in writing and pursuant to the vote of the holders of a majority of the stock issued and outstanding, the directors shall have power and authority to sell, assign, transfer or otherwise dispose of the whole property of this corporation.

The directors shall from time to time determine whether and to what extent, and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the directors, or by a resolution of the stockholders.

The board of directors, in addition to the powers and authorities by statute and by the by-laws expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the statute, of the charter, and to any regulations that may from time to time be made by the stockholders, provided that no regulations so made shall invalidate any provisions of this charter, or any prior acts of the directors which would have been valid if such regulations had not been made.

The corporation may in its by-laws confer powers additional to the foregoing upon the directors, and may prescribe the number necessary to constitute a quorum of its board of directors, which number may be less than a majority of the whole number.

The board of directors may, by resolution passed by a majority of the whole board, designate two or more of their number to constitute an executive committee, which committee shall for the time being, as provided in said resolution or in the by-laws of said corporation, have and exercise all the powers of the board of directors in the management of the

business and affairs of the company, and have power to authorize the seal of the corporation to be affixed to all papers which may require it.

Neither the directors nor the members of the executive committee nor the president nor vice-president shall be subject to removal during their respective terms of office except for cause, nor shall their terms of office be diminished during their tenure.

Both stockholders and directors shall have power to hold meetings, to have one or more offices, and to keep the books of the corporation (subject to the provisions of the statute) outside of this state, at such places as may be from time to time designated by them.

We, the undersigned, for the purpose of forming a corporation in pursuance of an act of the legislature of the state of Delaware, entitled "An act providing a general corporation law," do make, record and file this certificate, hereby declaring and certifying that they are all the original incorporators, that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals.

In presence of

[L. s.]

[L. s.]

[L. s.]

[Ten-cent internal revenue stamp canceled.]

State of  
County of

} ss.

Be it remembered that on this                      day of                      , A. D.                      ,  
personally came before me                      , a notary public  
for the State of

parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand seal of office the day and year aforesaid.

[Internal revenue stamp.]

## GENERAL CLAUSES.

General clauses may be used in connection with and following special clauses which are used for designating the primary objects of the company. As a rule they will be construed in connection with special clauses.

As to the utility of these clauses, see the following English cases: *Peruvian Railways Company v. Thames & Mersey M. I. Co.*, 2 Ch. 617; *Ernest v. Nichols*, 6 H. L. 401; *Overend, Gurney & Co. v. Gibbs*, L. R. 5 H. L. 480; *In re License Victuallers' Asso.*, 42 C. Div. 1.

It is wise to always add appropriate general clauses to the special or primary object clauses of the company.

## TO MANUFACTURE OR SELL GENERALLY.

1. To manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in or deal with goods, wares, merchandise and property of every class and description.

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## TO CARRY ON OTHER BUSINESS.

2. To carry on any other business (whether manufacturing or otherwise) which may seem to the company capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of the company's property or rights.

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## TO PURCHASE PATENTS.

3. To apply for, purchase or otherwise acquire, and to hold, own, use, operate and to sell, assign or otherwise dispose of, to grant licenses in respect of or otherwise turn to account, any and all inventions, improvements and processes used in connection with, or secured under letters-patent of the United States or elsewhere, or otherwise, and with a view to the developing of the same, to carry on any other business, whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

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## TO ACQUIRE STOCK, ETC., IN OTHER COMPANIES.

4. To hold, purchase or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock or bonds or other evidence of indebtedness created by other corporation or corporations, and while the holder of such stock to exercise all the rights and privileges of ownership, including the right to vote thereon to the same extent as a natural person might or could do.

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## TO ACQUIRE OTHER BUSINESS.

5. To acquire and undertake the whole or any part of the business, property, assets and liabilities of any person or company carrying on any business which this company is authorized to carry on, or possessed of property suitable for the purpose of this company.

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## TO ACQUIRE STOCK IN SIMILAR COMPANIES.

6. To take or otherwise acquire, and hold shares in any other company having objects altogether or in part similar to those of this company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this company.

## TO REMUNERATE FOR SERVICES.

7. To remunerate any person or company for services rendered or to be rendered, in placing or assisting to place or guaranteeing the placing of any of the shares in the company's capital, or any debentures or other securities of the company, or in or about the formation or promotion of the company or the conduct of its business, or otherwise.

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## TO PURCHASE PROPERTY.

8. Generally to purchase, take on lease or in exchange, hire or otherwise acquire, any real and personal property, and any rights or privileges which the company may think necessary or convenient for the purposes of its business.

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## TO CONSTRUCT WORKS.

9. To construct, improve, maintain, work, manage, carry out, or control any roads, railways, branches or sidings, bridges, reservoirs, water courses, wharves, manufactories, warehouses, works, shops, stores and other works and conveniences which may seem calculated directly or indirectly to advance the company's interests, and to contribute to, or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof.

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## TO ACT AS TRUSTEES, ETC.

10. To do all or any of above things (in any part of the world) as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents or otherwise, and either alone or in conjunction with others.

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## TO ADOPT PROMOTER'S CONTRACT.

11. To adopt or carry into effect, with or without modification, an agreement made between A. of the one part, and B. (on behalf of the company to be organized) of the other part.

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## TO PURCHASE, HOLD, ETC., REAL ESTATE.

12. To the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, maintain, work, develop, sell, convey, mortgage, or otherwise dispose of, without limit as to amount, within or without the state of Delaware, and in any part of the world, real estate and real property, and any interest and rights therein.

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## TO CONDUCT BUSINESS IN OTHER STATES.

13. To have one or more offices, to carry on all, or any part of its operations and business, and unlimitedly and without restriction to hold, pur-

chase, mortgage, lease and convey real and personal property and to conduct its business in any state or territory of the United States, and in any foreign country or place, but subject always to the laws thereof.

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TO CONTROL AND MANAGE OTHER COMPANIES.

14. To cause or allow the legal title, estate and interest in any property acquired, established or carried on by the company to remain or be vested, or registered in the name of, or carried on by any other company or companies, foreign or domestic, formed or to be formed, and either upon trust for, or as agents or nominees of this company or upon any other terms or conditions which the board of directors may consider for the benefit of this company, and to manage the affairs, or take over and carry on the business of such company or companies so formed or to be formed, either by acquiring the shares, stocks, or other securities thereof, or otherwise howsoever, and to exercise all or any of the powers of holders of shares, stocks, or securities thereof, and to receive and distribute as profits the dividends and interest on such shares, stocks, or securities.

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TO MAKE CONTRACTS, ETC.

15. To enter into, make, perform and carry out contracts of every sort and kind, with any person, firm, association, corporation, private, public or municipal, or body politic, and with the government of the United States, or any state, territory or colony thereof, or any foreign government; to purchase, lease, exchange, hire or otherwise acquire any and all rights, privileges, permits, or franchises suitable or convenient for any of the purposes of its business.

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TO CONSTRUCT WORKS, ETC.

16. To purchase, lease, exchange, hire, or otherwise acquire any and all rights, privileges, permits or franchises suitable or convenient for any of the purposes of its business; to erect and construct, make, improve, aid or subscribe toward the construction, making and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves, houses for employés and others, and works of all kinds; and in conjunction with and in furtherance of the general business and purpose of the corporation, as above described, to construct, lease, own, operate or sell transportation line or lines, in any state or country, subject to the laws of such state or country, either directly or through the ownership of stock of a corporation formed, or to be formed, for the purpose, under the laws of such state or country.

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GENERAL WORDS.

17. That the objects for which this corporation is formed are to do any or all of the things herein set forth to the same extent as natural persons

might or could do, and in any part of the world, as principals, agents, trustees or otherwise, and in furtherance, and not in limitation of the general powers conferred by the laws of the state of Delaware, the corporation shall have also the following powers, viz.: (Here insert special objects.)

In general to carry on any other business (whether manufacturing or otherwise) which may seem to the corporation capable of being conveniently carried on in connection with the above, or calculated, directly or indirectly, to enhance the value of or render profitable any of the corporation's property or rights.

The objects specified in the \_\_\_\_\_ paragraph hereof shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause or other paragraph herein.

### **SPECIAL CLAUSES FOR PARTICULAR OBJECTS.**

The following special clauses are intended to designate the primary or controlling object of the company.

They may be varied to meet the necessities of each particular case, and are suggested as precedents subject to modification.

As a rule they may be followed to advantage by one or more general clauses appropriate to the special clause.

#### **Form 3.**

### **LAND AND GENERAL INVESTMENT COMPANIES.**

To acquire by purchase, lease, exchange, hire or otherwise, lands, or any interest therein; to erect and construct houses, buildings or works of every description on any land of the company, or upon any other lands, and to rebuild, enlarge, alter and improve existing houses, buildings or works thereon, to convert and appropriate any such land into and for roads, streets and other conveniences, and generally to deal with and improve the property of the company; to sell, lease, let, mortgage or otherwise dispose of the lands, houses, buildings, hereditaments and other property of the company; to undertake or direct the management and sale of the property, building and lands; to transact on commission the general business of a real estate agent.

#### **Form 4.**

### **BREWING COMPANIES.**

To carry on the business of brewers and maltsters in all its branches.

To carry on all or any of the businesses of hop merchants and growers, malt, wine and spirits merchants and importers, and distillers, coopers, and bottlers, bottle makers, manufacturers of and dealers in aerated and mineral waters, and all other articles of like nature.

To buy, sell, manipulate, and deal, both wholesale and retail, in com-



modities, articles and things of all kinds which can conveniently be dealt in by the company in connection with any of its objects.

To enter into contracts with such parties, and on such terms as may seem expedient, and in particular to customers of, and persons having dealings with the company.

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**Form 5.**

**HOTEL COMPANY.**

To purchase, take on lease or otherwise acquire lands, or buildings in \_\_\_\_\_ or elsewhere; to erect on such lands as aforesaid, or any of them, hotel or hotels, cottages and any other necessary buildings and works, and to use, convert, adapt and maintain all or any of such lands, buildings and premises, to and for the purposes of hotels and inns, with their usual and necessary adjuncts.

To fit up and furnish the same, and to carry on the business of hotel and innkeepers, and a livery stablekeeper.

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**Form 6.**

**MANUFACTURING COMPANIES.**

To carry on the business of manufacturers of \_\_\_\_\_ and \_\_\_\_\_ of all kinds, and of all articles and things used in the manufacture, maintenance, and working thereof, and also all apparatus and implements and things for use in sports or games.

To buy, sell, repair, alter, and deal in apparatus, machinery, materials and articles of all kinds, which shall be capable of being used for the purpose of any business herein mentioned, or likely to be required by customers of any such business.

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**Form 7.**

**ELECTRIC LIGHT COMPANIES.**

To carry on the business of an electric light company in all its branches, and in particular to construct, lay down, establish, fix and carry out all necessary cables, wires, lines, accumulators, lamps and works, and to generate, accumulate, distribute and supply electricity, and to light cities, towns, streets, docks, markets, theatres, buildings, and places both public and private.

To carry on the business of electricians, mechanical engineers, suppliers of electricity for the purpose of light, heat, motive power, or otherwise, and manufacturers of and dealers in all apparatus and things required for or capable of being used in connection with the generation, distribution, supply, accumulation and employment of electricity.

**Form 8.****MINING COMPANIES.**

To purchase, take on lease, or otherwise acquire any mines, mining rights and land in \_\_\_\_\_ or elsewhere, and any interest therein, and to explore, work, exercise, develop, and turn to account the same. To quarry, smelt, refine, dress, amalgamate and prepare for market, ore, metal and mineral substances of all kinds, and to carry on any other operations which may seem conducive to any of the company's objects. To buy, sell, manufacture and deal in minerals, plant, machinery, implements, conveniences, provisions and things capable of being used in connection with mining operations, or required by workmen and others employed by the company. To construct, carry out, maintain, improve, manage, work, control and superintend any roads, ways, railways, bridges, reservoirs, water courses, aqueducts, wharves, furnaces, mills, crushing works, hydraulic works, works, factories, warehouses, and other works and conveniences which may seem directly or indirectly conducive to any of the objects of the company, and to contribute to, subsidize, or otherwise aid or take part in any such operations.

**Form 9.****PRINTING AND PUBLISHING COMPANIES.**

To acquire, print, publish and circulate any newspaper or newspapers, or other publications, and generally to carry on the business of newspaper proprietors and printers, lithographers and engravers; to build, construct, erect, purchase, hire, or otherwise acquire, or provide any buildings, offices, plant and machinery, or other things necessary or useful for the purpose of carrying out the objects of the company.

**Form 10.****MANUFACTURING COMPANIES.**

(Fuller Form.)

To purchase, lease, or otherwise acquire lands and buildings in \_\_\_\_\_ or elsewhere for the erection and establishment of a manufactory or manufactories and workshops, with suitable plant, engines and machinery, with a view to manufacture, purchase, sell or otherwise deal in \_\_\_\_\_, either directly or indirectly through the medium of agents or otherwise; in particular to acquire the business now carried on by \_\_\_\_\_, with the land and buildings, plant, stock, and other properties connected with the business, and also the good-will of the said business, and the benefit of all pending contracts, and the stock-in-trade thereof, together with the patents and other rights and privileges relating to the said business, vested in or held on behalf of them; to purchase or otherwise acquire patents, patent rights

and privileges, improved or secret processes for or in any way relating to all or any of the objects aforesaid, and to grant licenses for the use of, or to sell or otherwise deal with any patents, patent rights and privileges, improved or secret processes acquired by the company; to sell, lease or otherwise deal with real and personal property of the company.

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**Form 11.**

**PUBLIC WORKS.**

To construct, equip, improve, work, develop, manage or control public works and conveniences of all kinds, including railways, docks, harbors, piers, wharves, canals, reservoirs, embankments, improvement, sewage, drainage, sanitary, water, gas, electric light, telephonic, telegraphic, and power supply works and hotels, warehouses, markets, and public buildings, tunnels, bridges, viaducts and all other works or conveniences of public use or utility.

To apply for, purchase, or otherwise acquire, any contracts and concessions, for or in relation to the construction, execution, carrying out, equipment, improvement, management, administration, or control of public works and conveniences, and to undertake, execute, carry out, dispose of, or otherwise turn to account the same.

To purchase or otherwise acquire, issue, re-issue, sell, place, and deal in shares, stocks, bonds, debentures and securities of all kinds, and to give any guaranty or security for the payment of dividends or interest thereon, or otherwise, in relation thereto.

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**Form 12.**

**TO PURCHASE AND WORK PATENTS.**

To purchase or acquire the letters-patent of the United States of America granted to A. B. covering the manufacture of \_\_\_\_\_ and apparatus and machinery therefor, dated \_\_\_\_\_, Number \_\_\_\_\_, and Number \_\_\_\_\_, respectively, and any subsequent improvement or improvements in and upon the said manufacture, apparatus and machinery which may be invented by the said A. B., and all extensions of the said letters-patent or any of them, and also the several letters-patent granted to the said A. B. by the governments of \_\_\_\_\_ and any other letters-patent which may hereafter be granted to the said A. B. by the United States of America, or by the government of any country whatsoever, either in respect of the inventions comprised by the hereinbefore mentioned letters-patent, or any of them, or any such further inventions or improvements as before mentioned, and all extensions with reference thereto respectively; to carry on the business of a manufacturer of \_\_\_\_\_; to acquire by purchase or otherwise for the business of the company in \_\_\_\_\_ any estate or estates, land or

buildings, mills, plant, machinery, patents, patent rights, secret processes, or other things, and to erect and maintain, or reconstruct and adapt buildings, mills, plant, machinery, and other things found necessary or convenient for the purposes of the company; to obtain letters-patent or similar privileges in this or any other country for any invention in connection with the company's manufacture or business; to sell, lease or otherwise dispose of the lands, buildings, plant, property and effects of the company; to sell the patents, patent rights, or secret processes to be acquired by the company, or any of them, and to grant licenses to use the same to any person or persons, company or companies.

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### **Form 13.**

#### **SECURITIES AND INVESTMENTS.**

To purchase, receive, hold and own bonds, mortgages, debentures, notes, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness of any private, public or municipal corporation, or of the government of the United States, or of any state thereof; to receive, collect and dispose of interest, dividends and income upon, of and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held or owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, to do any and all acts and things tending to increase the value of the property at any time held by the company; to issue bonds and to secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held by the company, and to sell or pledge such bonds for proper corporate purposes, as and when the board of directors shall determine; and, in the promotion of its said corporate business of investment, and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature; but nothing herein is to be construed as intended to form a banking company, a savings bank or a corporation intended as a part of its business to derive profit from the loan and use of money.

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### **Form 14.**

#### **WATER POWER.**

To purchase, acquire, hold, lease, manage, control and operate, and to sell, lease and dispose of to such person or persons, corporation or corporations, and for such price or prices, and on such terms and conditions, as to this corporation may seem proper, water, water rights, power, priv-

illeges and appropriations, for mining, milling, agricultural, domestic and other uses and purposes; and to develop, control, generally deal in and dispose of to such person or persons, corporation or corporations, and for such price or prices, and on such terms and conditions as to this corporation may seem proper, electrical and other power, for the generation, distribution and supply of electricity for light and heat, and for any other uses and purposes to which the same are adapted.

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### **Form 15.**

#### **BUILDING CONTRACTORS.**

To make, enter into, perform and carry out contracts for constructing, altering, decorating, maintaining, furnishing, fitting up and improving buildings of every sort and kind; to advance money to and enter into contracts and arrangements of all kinds with builders, property owners and others; to carry on in all their respective branches the business of builders, contractors, decorators, dealers in stone, brick, timber, hardware, and other building materials or requisites; to purchase for investment or resale, and to sell houses, lands, real property of all kinds and any interest therein, and generally to deal in, sell, lease, exchange or otherwise deal with lands, buildings and any other property, whether real or personal.

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### **Form 16.**

#### **FREIGHT AGENTS.**

General shipping and forwarding business, to wit: The receiving, handling, shipping, forwarding and transporting of goods, wares, merchandise and all classes of freight by land or water.

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### **Form 17.**

#### **TYPEWRITING MACHINES.**

To carry on the business of manufacturing, buying, selling, operating and distributing writing machines, typewriters, typewriter materials, appliances and inventions, and all other materials and articles connected with, or in anywise relating to the manufacture, sale or use of writing machines and typewriters; to establish and maintain manufactories, agencies and depots for the manufacture, purchase, sale, exchange, delivery and distribution of writing machines, typewriters and typewriter appliances and supplies; to purchase, receive, hold, sell, assign, license to use, or otherwise dispose of, any patents for inventions, discoveries or rights therein, owned, operated, used, or employed in the business of manufacturing, buying, selling, or using writing machines, typewriters or typewriter supplies.

**Form 18.****BUILDING MATERIALS.**

To manufacture, buy, sell, deal and trade in any and every kind of bricks, stone, and building materials and supplies; to transport bricks, building materials, goods and merchandise by land or water, and for that purpose to purchase, own or charter, and operate, steam boats, steam tugs, barges and other boats.

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**Form 19.****FURNITURE.**

To manufacture, buy, sell and otherwise dispose of chairs, furniture, railway fixtures and appliances, mats, rugs, carpets and machinery and any and all kinds of same, and to sell and manufacture any and all goods or materials used therein or any of them; to deal in rattans and all products thereof; to purchase, sell or control patents, and to acquire and own licenses under patents or patent rights, and to grant license, or licenses to other person or persons, corporation or corporations, to manufacture and sell said patented articles or appliances or machinery under any or all patents or licenses which it may own or have any interest in or may hereafter acquire, and also to buy and sell patents or patent rights of any nature or kind, and to grant licenses thereunder, and to do any and all other business which is lawful and not contrary to the statute laws of the state of Delaware, and to establish agencies or branches in any and all places it may see fit and to do any and all lawful business incidental to or in any way connected with said purposes or any of them.

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**Form 20.****TYPESETTING MACHINES.**

The object for which the corporation is formed are the purchase, manufacture, sale and letting of machinery and instrumentalities and all other materials and objects used in the art of printing and all improvements thereon and substitutes therefor, and all materials used in manufacturing the same; and also acquiring and disposing of rights to manufacture, use and sell or otherwise dispose of rights to manufacture, use and sell or otherwise dispose of such machines, instrumentalities and materials; and also transacting other kinds of business incidental thereto or which may be profitably carried on in connection therewith.

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**Form 21.****CHEMICALS.**

To manufacture, buy, sell, deal in and use alkalies and chemicals of all kinds and all articles and things used in the manufacture, maintenance

and working thereof, and also all apparatus and implements and things for use either alone or in connection with products of which they are ingredients or in the manufacture of which they are a factor.

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**Form 22.**

**GRAIN ELEVATOR.**

To buy and lease lands, and to erect thereon buildings and machinery for the purpose of receiving, warehousing and delivering grain and other merchandise; to issue bonds, secured by a mortgage or mortgages upon the property and franchises of said company, with the proceeds of which to erect suitable buildings and purchase machinery for said purposes, and to fit up, occupy, and use a grain elevator, or elevators, and to carry on the business of receiving, handling, and storing of grain and other merchandise and of issuing receipts for grain and merchandise received, and charging to and collecting from the owners or holders thereof reasonable charges for services done and performed in and about the receipt, handling, and storage of grain and other merchandise.

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**Form 23.**

**TOBACCO COMPANY.**

The objects for which this company is formed are to cure leaf tobacco, and to buy, manufacture and sell tobacco in any and all its forms, and to erect or otherwise acquire factories and buildings; to establish, maintain and operate factories, warehouses, agencies and depots for the storing, preparation, cure and manufacture of tobacco, and for its sale and distribution, and to transport or cause the same to be transported, as an article of commerce, and to do any and all things incidental to the business of trading and manufacturing aforesaid.

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**Form 24.**

**CORDAGE.**

The objects for which said company is formed are as follows, viz.: The manufacture and sale of cordage and binder twine, and any and all similar commodities, including the acquisition by purchase, manufacture or cultivation of all materials, supplies, machinery and other articles necessary or convenient for use in connection with and in carrying on the business of manufacture and sales as aforesaid; the taking, acquisition, buying, holding, owning, selling, leasing, mortgaging, improving, cultivating and otherwise dealing in and disposing of real estate, manufactories, buildings and improvements necessary or convenient in carrying on said business.

**Form 25.****IRON.**

To buy, sell, deal in and deal with iron and iron ore, and all like or kindred products; to mine, manufacture, prepare for market, market and sell the same, and any articles or product in the manufacture or composition of which metal is a factor, including the acquisition by purchase, mining, manufacture or otherwise of all materials, supplies and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof.

To purchase, take or lease, or otherwise acquire any mines, mining rights and land in the United States or elsewhere, and any interest therein, and to explore, work, exercise, develop and turn to account the same; to quarry, smelt, refine, dress, amalgamate and prepare for market, ore, metal and mineral substances of all kinds, and to carry on any other operations which may seem conducive to any of the company's objects; to buy, sell, manufacture and deal in minerals, plant, machinery, implements, conveniences, provisions and things capable of being used in connection with mining operations or required by workmen and others employed by the company.

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**Form 26.****THREAD.**

To manufacture cotton, linen, wool and other threads, cloths, fabrics, and other manufactures, articles and goods composed in the whole, or in part, of cotton, flax, hemp, silk, wool or other material; to buy, grow, prepare and sell the stock and raw material for said manufactures and to purchase or manufacture blocks, spools, bobbins, boxes, tickets, labels, wrappers, show cards, machines, tools, and other appliances, articles or products whatsoever required in and connected with the said business, and the trading in, dealing in, selling and disposing of the articles purchased or manufactured by the company.

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**Form 27.****COTTON COMPANY.**

The objects for which the company is formed are the buying of seed cotton, the ginning and cleaning of same, both cotton and seed, the baling of cotton by mechanical process, the manufacture of machinery for the purposes named and all business connected with and collateral thereto, including the selling, shipping and warehousing of the products.

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**Form 28.****LEATHER.**

That the objects for which the company is formed are the manufacture and sale of leather, lumber and belting, including the acquisition and use



in the manner and to the extent permitted by law of all necessary and convenient lands, timber, bark, mills, plants, machinery, supplies and other property necessary to or convenient in connection with the manufacturing and sale of leather, lumber and belting, as aforesaid; and in general, the engagement in any and all lawful business whatever, which may be found convenient or necessary in connection with the business of manufacturing and selling leather, lumber and belting as aforesaid, in the state of Delaware and other states and territories of the United States and elsewhere.

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**Form 29.**

**THEATRICAL.**

To purchase, own, produce, and present, and to license others to produce and present, theatrical plays and operas, and to acquire and hold, sell, assign and transfer, copyrighted and uncopyrighted plays and operas.

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**Form 30.**

**SUGAR.**

The purchase, manufacture, refining and sale of sugar, molasses and melada and all lawful business incidental thereto.

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**Form 31.**

**DISTILLERS.**

To manufacture, buy, sell, deal in, distribute, store, warehouse and export whisky of all kinds, high wines, alcohol, spirits and gins of all kinds, and all kinds of distillery products and by-products thereof; to carry on the general business of distilling, re-distilling and rectifying high wines, spirits and alcohol, and of compounding and blending of gins and whiskies of all kinds; to manufacture, buy, sell, deal in, store, warehouse, distribute and export grain, molasses and all articles used in connection with the operation of a distillery, and to manufacture, buy, sell, deal in, distribute, store, warehouse and export all products or by-products of such articles; to do a general warehouse and storage business; to do a general cooperage business; to issue, register, certify and guarantee warehouse receipts; to feed cattle; to carry or transport or cause to be carried or transported any of the property above referred to.

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**Form 32.**

**MERCANTILE AGENCY.**

To establish, maintain and conduct a general mercantile agency, to carry on every branch of business usually transacted in connection therewith, including the obtaining and acquiring by purchase or in any other

lawful manner information, statistics, facts and circumstances of, relating to, or affecting the business, capital, debt, solvency, credit, responsibility and commercial condition and standing of any and all individuals, firms, associations and corporations engaged in or connected with any business, occupation, industry or employment in any part of the civilized world, and particularly in and throughout the United States and Canada, and to dispose of, sell, loan, pledge, hire and use in any and all lawful ways the information, statistics, facts and circumstances so obtained and acquired, also to establish, maintain and conduct a general collection business for the recovery, enforcement and collection of accounts, bills, debts, dues, demands and obligations and claims of all kinds, also to establish and conduct a general business of making and issuing contracts to secure the faithful performance of any mercantile or commercial contract or agreement, and for the prompt payment of any debt or obligation due under or arising from or out of any mercantile or commercial transaction; also to acquire by purchase or otherwise and to establish, maintain and conduct a general printing, publishing, bookbinding and advertising business, and to prepare and distribute newspapers, books, pamphlets, directories, catalogues, reports, ratings, digest, lists and other printed matter of interest or use to merchants, traders, bankers and lawyers.

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**Form 33.**

**STATIONERS, ETC.**

To carry on the business of stationers, printers, lithographers, electrotypers, engravers, die sinkers, envelope manufacturers, bookbinders, book manufacturers; to carry on the business of booksellers, publishers and dealers in the materials used in the manufacture of paper, and dealers in or manufacturers of any other articles or things of a character similar or analogous to the foregoing, or any of them or connected therewith.

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**Form 34.**

**ELECTRIC.**

To carry on the business of electricians, mechanical engineers and manufacturers, and workers and dealers in electricity, motive power, heat and light, and any business in which the application of electricity or any power, like or otherwise, is or may be useful, convenient or ornamental, or any other business of a like nature, and to manufacture and produce, and, either as principals or agents, trade and deal in and deal with any article belonging to any such business, and all apparatus, appliances and things used in connection therewith, or with any inventions or patents; to produce and accumulate electricity and electromotive force, or other agency, similar or otherwise, and to supply the same for the production, transmission or use of power for lighting, heating and motive purposes or otherwise, as may be thought advisable, and to light streets, places and

buildings, public or private, by means of electricity, or otherwise, or to enable the same so to be lighted; to construct, maintain and operate works, for the supply and distribution of electricity for light, heat and power; to carry on the business of suppliers of light, heat and power and carriers of passengers and goods by land and by water in all its branches; to acquire by purchase or otherwise, maintain, equip, operate and build street and other railways operated by electricity or otherwise; to use or manufacture, operate and equip telephones, telegraphs, phonographs and all electrical apparatus now known, or that may hereafter be invented, including all wires or appliances for connecting electric apparatus at a distance with other electric apparatus, and including the formation of electric exchanges or centres; to acquire, by purchase or otherwise, and to use, operate and equip subways, conduits and ducts, and to obtain, accept and use all permits and also franchises, municipal or otherwise; to purchase or otherwise acquire and to sell, work or otherwise deal with land, water, water-power, water-power supplies and water-power work and equipment, or works; to undertake, construct, acquire and carry on works of all kinds relating to any business of the company, and to enter into such contracts and make such arrangements as may be necessary to carry out the same.

To carry on the business of an electric light company in all its branches, and to construct, lay down, establish, fix and carry out all necessary cables, wires, lines, accumulators, lamps and works, appurtenances and appliances.

### **Form 35.**

#### **NEWSPAPERS.**

To carry on business as proprietors and publishers of newspapers, journals, magazines, books and other literary works and undertakings and especially to take over the publication known as the  
to carry on business as printers, booksellers, bookbinders, stationers, photographers, photographic printers, stereotypers, electrotypers, lithographers, and any other business or manufacture that may seem expedient; to undertake and transact all kinds of business relative to the gathering and distribution of information of every sort and kind to the same extent that a natural person might or could do, and in connection therewith to acquire by purchase or otherwise, construct, maintain and otherwise deal with land and submarine telegraphs, including in such expression telephone and all other electrical or other contrivances for transmitting messages by signal; lands, works, buildings and conveniences in any part of the world.

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### **Form 36.**

#### **SMELTERS AND REFINERS.**

To acquire, deal in, sell and otherwise dispose of ores, minerals and metals; to smelt, reduce, refine, mill and otherwise treat ores, minerals

and metals; and to manufacture, acquire, deal in, sell and otherwise dispose of products of ores, minerals and metals.

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**Form 37.**

**ELECTRICAL MACHINERY.**

To carry on the business of manufacturers and dealers in electric motors, dynamos and other electrical machinery, appliances and plants, and to buy, sell, manufacture, repair, convert, alter, let or hire, and deal in electrical appliances and goods of every kind and character, and machinery of all manner or kind.

To produce and accumulate electricity and electromotive force, and to supply the same for the production, transmission or use of power for lighting, heating and motive purposes or otherwise, as may be thought advisable, and to light streets, places and buildings, public or private, by means of electricity or otherwise, or to enable the same to be so lighted.

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**Form 38.**

**NEWSPAPER AND PUBLISHING.**

To acquire, print, publish, conduct and circulate or otherwise deal with any newspaper or newspapers or other publications, and generally to carry on the business of newspaper proprietors and general publishers; to carry on, if and when it shall seem desirable, the trade or business of general printers, lithographers, engravers and advertising agents; to build, construct, erect, purchase, hire, or otherwise acquire or provide any buildings, offices, workshops, plant and machinery or other things necessary or useful for the purpose of carrying out the objects of the company.

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**Form 39.**

**SHIPPING.**

To construct, hire, purchase and operate steamships and other vessels of any class, and to establish and maintain lines or regular services of steamships or other vessels, and generally to carry on the business of shipowners, and to enter into contracts for the carriage of mails, passengers, goods and merchandise by any means, either by its own vessels, railways and conveyances, or by or over the vessels, conveyances and railways of others; to construct, purchase, take on lease, or otherwise acquire and work any railway, wharf, pier, dock, buildings or works capable of being advantageously used in connection with the business of the company as a shipping company; in connection with any of the objects aforesaid to carry on the business of a railway company, railway contractors, shipbuilders, engineers, manufacturers of machinery and car-builder; to acquire concessions or licenses for the establishment and

working of lines of steamships or sailing vessels between any ports of the world, or for the formation or working of any railway, wharf, pier, dock, or other works, or for the working of any public conveyances.

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**Form 40.**

**ELECTRIC LIGHTING.**

To manufacture, generate, buy, sell, accumulate, store, transmit, furnish and distribute electric current for light, heat and power.

To manufacture, buy, sell, lease, let or operate any or all machinery or appliances for the manufacture, generation, storage, accumulation, transmission or distribution of any or all types of electric current, and any or all manner of electric machinery, apparatus or supplies of any nature or kind whatsoever.

To erect, buy, sell, operate, lease and let power plants and generating stations for the manufacture, generation, accumulation, storage, transmission and distribution of electric current and any or all machinery used therein or in connection therewith.

To manufacture, buy, sell, lease and let fixtures, chandeliers, electroliers, brackets, lamps, globes, and other supplies and appurtenances used for or in connection with the manufacture, generation, accumulation, storage, transmission, distribution or use of electric current for light, heat, or power, or otherwise, and to carry on a general business of electricians, mechanical engineers, suppliers of electricity for the purpose of light, heat or power, or otherwise, and install, erect and operate, sell or lease wires, cables and fixtures, both interior and exterior, for the transmission and use of electric current; and to manufacture and deal in all apparatus and things required for or capable of being used in connection with the generation, distribution, supply, accumulation and employment of electricity.

To buy, sell, operate or lease pole lines, erect poles, string wires thereon, or on poles of other individuals or corporations, on any and all streets, avenues, highways and roads of counties, townships, towns, villages and cities, and over or under all canals and other waterways, and across any and all bridges, and to use the same either for the transmission of electric current for delivery to consumers on such lines or for transmission of current to independent vendors thereof, and to sell or lease to other individuals or corporations the right to string electric wires on or attach electric wires to any or all poles so erected, owned or leased, and to use such lines both as through lines and for local delivery.

To build and construct and use, for any of the purposes stated above, underground subways or conduits in such streets, avenues, highways and roads, and under such canals and other waterways, and string electric wires or conductors therein, and to buy or lease from, or sell or let to any other individual or corporation the right to string and to use as aforesaid electric wires or conductors in any such subways.

**Form 41.****PAPER.**

To carry on the business of importers of, dealers in and manufacturers of paper, paper materials and paper substitutes of all kinds, and of the raw substances, pulps, preparations, mixtures, solvents and combinations thereof for any purpose whatsoever, and articles and substances made from any kind of paper, pulp, mixture, combination, solvent, preparation or material used in the manufacture or treatment of paper or paper substitutes; also the business of stationers, lithographers, publishers, wall and ceiling paper manufacturers, and paper stainers; also the business of importers and dealers in and manufacturers of cotton, silk, woollen, linen, jute, textile, fibrous and all other materials and the yarns and other products and materials made therefrom, and all kinds of fabrics, substances, articles and things manufactured from such yarns, products and materials; the importing of, dealing in and manufacturing of all kinds of imitation leathers and rubbers, waterproof goods and all other articles made from any such fabrics, substances, articles and things; also the business of manufacturers and importers of and dealers in paints, varnishes, printing inks, and all other articles and things which can be conveniently manufactured, imported or dealt in by persons carrying on any of the above businesses.

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**Form 42.****SHIP-BUILDING.**

To build operate, maintain, buy, sell, deal in and with, own, lease, pledge and otherwise dispose of ships, vessels and boats of every nature and kind whatsoever, together with all materials, articles, tools, machinery and appliances entering into, or suitable and convenient for the construction or equipment thereof, and together with engines, boilers, machinery and appurtenances of all kinds, and tackle, apparel, and furniture of all kinds; the transportation of goods, merchandise and passengers upon land or water; building, repairing and designing houses, structures, vessels, ships, boats, wharves, docks, dry-docks, railroads, engines, cars, machinery and all other equipment; constructing, maintaining and operating railroads; to build, construct, repair, maintain and operate water, gas or electrical works, tunnels, bridges, viaducts, canals, wharves, piers and like works of internal improvement or public use or utility; to own, operate and maintain steamship lines, vessel lines or other lines for transportation.

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**Form 43.****ELECTRIC VEHICLES.**

To acquire by purchase, lease or otherwise, and to manufacture and construct vehicles of every and any kind or character used or useful as a

means of conveying, delivering, moving, carrying and transporting persons, goods, chattels, products, substances and property of any and every kind and character and equip and install the same for use and operation by electricity, compressed air, oil, gas or any other means of motive power, either singly or in combination thereof and to operate, use, sell, lease and hire the same, and to contract with corporations, firms, associations or individuals for operating, using, selling, leasing and hiring the same; to manufacture, purchase, own, lease, hire, erect, construct, equip, install, use, sell and dispose of all machines, compressors, generators, storage batteries, pumps, motors, structures, primary and secondary batteries, apparatus, instruments, fixtures and appliances for the manufacture, production, generation, distribution, use, supply and application of electricity, compressed air, oil, gas or other motive power, either singly or in combination thereof, or any or either of them, or any part or parts thereof.

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**Form 44.**

**POTTERY.**

To manufacture, buy, sell, trade and deal in any and every kind or class of pottery or earthen products, or articles composed in whole or in part of kaolin, clay or earthy matter; to mine, manufacture, prepare, buy, sell, deal and trade in any and every gaseous or other ingredient, material or substance entering into such manufacture, or used in conjunction therewith, or used in or about businesses similar to or relating thereto.

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**Form 45.**

**RAILWAY CARS.**

The objects for which, and for any of which, the corporation is formed, are the manufacturing and sale of railway cars, passenger, freight and street cars; the manufacturing and sale of car trucks, car wheels, and any and all parts of car or car trucks, including truck frames and all the accessories thereto, and all car equipments and appliances and specialties; the manufacture and sale of all the products of steel or of iron or of other metals, and of wood, or of any or all other materials; the manufacture and sale of iron castings, steel castings, journal bearings, malleable iron, the manufacturing and sale of all kinds of springs, including car springs; the manufacturing and sale of all kinds of water pipes and gas pipes, or other pipes; to manufacture, purchase, or otherwise acquire, to hold, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and with the products, materials, goods, wares and merchandise and property of every class and description, including the right to enter into and upon any and all mercantile business or businesses, and for that purpose to acquire by purchase, lease or otherwise stores or property available therefor, and to operate and maintain any and all stores or ware-

houses or business houses necessary or expedient for such purpose; to make, purchase, sell and deal in manufactured articles and to acquire and dispose of rights to make and use the same; to purchase, lease or otherwise acquire all or any part of the business and assets of any person, firm, association or corporation now or hereafter engaged in a business similar to that proposed to be carried on under this certificate of incorporation, and in the purchase of any such business or assets to assume any and all liabilities that may be then existing upon any such business or assets so purchased; to purchase or otherwise acquire mines and mining lands; to mine any and all metals, to engage in mining in all its branches, and to sell or dispose of the products of such mining; to engage in smelting in all its branches; to purchase or otherwise acquire lumber lands, to cut and mill lumber, to establish and operate lumber mills, and to sell and dispose of and deal in lumber, and to engage in the lumber business in all its branches; to establish and operate rolling mills; to acquire by lease, purchase or otherwise any and all real estate necessary and convenient for the establishment and operation of rolling mills; to acquire by lease, purchase or otherwise any and all real estate necessary and convenient for the establishment and operation of rolling mills, and to operate and maintain the same; to acquire and construct railroads, steamships or vessels; to use, operate and maintain the same.

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**Form 46.**

**ENGINEERING.**

To design, construct, enlarge, extend, repair, complete, take down and remove, or otherwise engage in any work upon bridges, piers, docks, foundations, mines, shafts, tunnels, wells, waterworks, lighthouses, buildings, railroads, canals and all kinds of excavations and iron, wood, masonry and earth construction in all parts of the world, and to make, execute and take or receive any contracts or assignment of contracts therefor or relating thereto or connected therewith, and to receive in payment therefor cash or stock, bonds or other securities of any corporation with which such contracts may be made, and any and all other property of any sort whatsoever, and to hold or sell the same, and to subscribe to the capital stock or bonds of any such corporation.

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**Form 47.**

**FLOUR.**

To purchase and sell grain or cereals of every kind and to manufacture, buy and sell flour and other food articles manufactured from grain or cereals, and to acquire by purchase, lease or otherwise, and to own, sell, lease, mortgage, convey, improve and operate factories and elevators, buildings and manufactories for the production and storage of all kinds



of goods that may be produced from or in conjunction with grain or cereals of any kind; to buy, sell, trade and deal in the products of said manufactories or factories and in said grains or cereals in any state of their product.

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**Form 48.**

**ELEVATORS.**

1. To manufacture, erect, build, furnish, equip, construct, repair, maintain, operate, buy, sell, and in general to utilize and deal in and deal with elevators and all kinds of hoisting machinery, including the acquisition by purchase, manufacture or otherwise of all materials, supplies, machinery and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned or any part thereof.

2. To manufacture, purchase or otherwise acquire, hold, own, mortgage, sell, assign and transfer, invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description, including any and all kinds of engines, dynamos, generators, pumps, and any and all kinds of machinery, any and all kinds of implements or articles of manufacture, and any and all kinds of mechanical apparatus.

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**Form 49.**

**CEMENT.**

To manufacture, sell and deal in Portland cement, and all kinds of natural and other cement, lime, limestone, calcined and other plasters and artificial stone, and to erect, or acquire by purchase, lease or otherwise, manufactories, kilns and buildings; to establish and maintain and operate manufactories, kilns, warehouses, agencies and depots for manufacturing and storing its cement and other products, and for their sale and distribution, and to transport, or cause the same to be transported, as articles of commerce, and to do any and all things incidental thereto and necessary and proper to be done in connection with the business of trading and manufacturing as aforesaid.

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**Form 50.**

**BICYCLES.**

The objects for which the corporation is formed are as follows, to wit: The manufacturing and selling of bicycles and all parts and accessories thereof, and the carrying on of any trade or business incident thereto or connected therewith; the manufacturing and selling of automobile vehicles and electric and other motors, and the carrying on of any trade or business incident thereto or connected therewith; the carrying on of any manufacturing or mercantile business lawful in the place where such business shall be carried on.

**Form 51.****DRY GOODS.**

The business, both wholesale and retail, of general dry goods merchants, drapers, haberdashers, milliners, dressmakers, tailors, furriers, lace-men, clothiers, hosiers, glovers and general outfitters.

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**Form 52.****ADVERTISING.**

To carry on a general advertising business in all its branches both as principals and agents; to carry on the business of printers, stationers, engravers, bookbinders, designers, dealers in paper and all fancy articles, booksellers, publishers, advertising agents, buyers and sellers of newspapers and publications of all kinds, and dealers in any other articles or things of a character similar or analogous to the foregoing or any of them, or connected therewith; and in general to undertake and transact all kinds of agency business which an individual may legally undertake; to buy, sell and deal in tickets for theatres and all other places of amusement or entertainment.

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**Form 53.****AUTOMOBILES.**

To carry on the business of truckmen, draymen, mechanical engineers and manufacturers and workers and dealers in motive power, and any business in which the application of compressed air, liquid air, electricity, or any power, like or otherwise, is or may be useful or convenient, or any other business of a like nature, and to do the business of common carriers, of persons, freight, express and property of all kinds, and, either as principals or agents, to trade and deal in, and deal with any article belonging to any such business, and all apparatus, appliances, and things used in connection therewith, or with any invention or patents: to produce and accumulate compressed air, liquid air, electricity and electromotive force, or other agents, similar or otherwise, and to supply the same for the production, transmission or use of power for any and all purposes and uses as may be thought advisable, and to manufacture, buy, sell, hire, lease, let and deal in air compressors, in electrical machines and apparatus, trucks and cars, and all machinery for the use of power of all kinds, and to obtain, accept and use all permits and all franchises, municipal or otherwise, to acquire and carry on works, buildings and structures of all kinds, relating to any business of the company, and to enter into such contracts and make such arrangements as may be necessary to carry out the same.

**Form 54.****ELECTRIC RAILWAY LIGHTING, ETC.**

In the state of \_\_\_\_\_, to generate, accumulate, distribute and supply electricity for light, heat, power and signalling and other purposes; to construct, own and operate lines for the conveyance of electric current for telegraph, telephone, cable and other purposes; to construct, own and operate electric telephone exchanges; to manufacture and supply gas for fuel and illuminating purposes; to light cities, towns, villages, buildings and places both public and private, by gas or electricity; to make, own, sell or lease all machines, instruments, apparatus and other equipments necessary for the generation, distribution, accumulation and employment of gas and electricity or either of them for any purposes; and generally to manufacture, use and sell gas and electricity or either of them for any and all lawful purposes; to construct whatever works and do whatever may be necessary for the utilization and disposition of the by-products resulting from the operation of such works; to acquire, own, manage and convey real estate, mineral, water, timber and oil properties and rights therein, and dealing in same, manufactured or unmanufactured, and to carry on the business of mining, smelting and refining and coke manufacturing; to build, own and operate and convey reservoirs and sewage, drainage, sanitary, water and all other public or private works; to acquire lands and to erect buildings and machinery necessary for the creation, transmission and utilization of power of any kind; in the state of \_\_\_\_\_, or elsewhere, to build, purchase or otherwise acquire steamships or vessels of any other class; to establish and maintain lines of steamships or other vessels of any class, and to enter into contracts for the carriage of passengers, mail and goods, to and from and in the state of \_\_\_\_\_, either by its own vessels, railways and conveyances or on the vessels, railways and conveyances of others; to construct, acquire, improve, develop, operate and manage steam, electric or other kinds of railways in said state, wharves, piers, docks, warehouses, harbors, canals, dams, tunnels, bridges, viaducts, subways and conduits, pipe lines and other buildings or works capable of being advantageously used in the transportation or care of freight or passengers, or the laying of cables, wires, pipes, etc., to construct, maintain and operate pneumatic tubes and other devices for the transmission and delivery of mails and parcels; to carry on the business of railway contractors, shipowners, engineers, manufacturers of locomotives, cars and machinery; to construct, own and operate steam plants for heating, furnishing power and other purposes; to manufacture, sell and distribute ice or refrigeration.

**Form 55.****FARM PRODUCTS.**

To produce, purchase, sell and deal in butter, cheese, eggs, milk, vegetables, poultry and other food, farm and dairy products, and the various materials entering into or used in the production thereof.

**Form 56.****FARM AND DAIRY PRODUCTS.**

To manufacture, sell and otherwise deal in condensed, preserved and evaporated milk and all other manufactured forms of milk; to produce, purchase and sell fresh milk and all the products of milk; to manufacture, purchase and sell all food products; to raise, purchase and sell all garden, farm and dairy products; to raise, purchase, sell and otherwise deal in cattle and all other live stock; to manufacture, lease, purchase and sell all machinery, tools, implements, apparatus and all other articles and appliances used in connection with all or any of the purposes aforesaid, or with selling and transporting the manufactured and other products of the company; and to do any and all things connected with, or incidental to, the carrying on such business or any branch or part thereof.

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**Form 57.****LIGHTING AND HEATING.**

To manufacture, sell and lease to other corporations and to public and private consumers, gas and oil machines, appliances and devices of all kinds for the production, supply and use of light, heat and power, and all goods, wares, merchandise, property and substances now used in the production thereof, or incidental thereto, or that hereafter may be invented, discovered or become known therein, and to manufacture, contract for, and furnish light, heat and power to other persons, firms and corporations, public and private.

**Form 58.****SECURITY AND INVESTMENTS.**

To purchase, receive, hold and own bonds, mortgages, debentures, notes, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness of any private, public or municipal corporation, or of the government of the United States, or of any state, territory or colony thereof, or of any foreign state or country; to receive, collect and dispose of interest, dividends and income upon, of and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held or owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof; to do any and all acts and things tending to increase the value of the property at any time held by the company; to issue bonds and to secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held by the company, and to sell or pledge such bonds for

proper corporate purposes, as and when the board of directors shall determine; and, in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature; but nothing herein is to be construed as intended to form a banking company, a savings bank or a corporation intended as a part of its business to derive profit from the loan and use of money.

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**Form 59.**

**STREET RAILWAY.**

To engage in and carry on the business of manufacturing street railway cars, railroad cars, automobiles, omnibuses, and all other vehicles for the transportation or conveyance of passengers, freight, mail or express, and of manufacturing car trucks, car wheels, equipment and rolling stock; and of purchasing and otherwise acquiring, constructing, equipping, leasing, maintaining and operating, by electricity or other power, street railways for the transportation of passengers, mail, express, merchandise or other freight, in any state or territory of the United States, or in any foreign country; and of manufacturing, generating, storing, using, selling and leasing electricity for power, light or heat, or other purposes, and for the purpose of acquiring the real and personal property, rights, privileges, ordinances and franchises of any street railway companies, and of electric power, light or heat companies, foreign or domestic, now or hereafter existing, or of leasing the same, or acquiring and holding the shares, bonds, or other securities of such railway or electric power, light or heat companies, or any interest therein; buying, selling and otherwise trafficking and dealing in any of the same; leasing, buying or otherwise acquiring, operating, maintaining and letting, selling or otherwise disposing of lands, mills, manufactories, plants, businesses, good-will, patents, patent rights, and all rights and privileges in connection therewith, and other property and appurtenances pertaining to said business; acquiring, operating and maintaining, and disposing of storage, transportation and all other facilities and conveniences whatsoever and wheresoever in connection with any of the purposes herein referred to; acting as financial, commercial and general agent for any and all other corporations and individuals, whomsoever and wheresoever, in the conduct of its or their business.

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**Form 60.**

**TELEGRAPH AND TELEPHONE CONSTRUCTION COMPANY.**

To acquire by purchase, or to construct and otherwise deal with telegraphs, telephones and all other electrical or other contrivances for transmitting messages by signal, works, buildings, conveniences; to acquire by purchase or otherwise any lands, or interest therein; to acquire, carry

on and deal with the undertakings, lands, property, and businesses of telegraph or telephone companies and of companies and persons engaged in manufacturing, constructing and laying down telegraph or telephone lines, instruments, machinery, wire and other materials and things used with or appertaining to telegraphs and telephones.

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### Form 61.

#### COMMON AND PREFERRED STOCK.

The total amount of capital stock of this corporation is to be  
dollars (\$) , divided into  
( ) shares of the par value of dollars  
(\$ ) each.

Of said stock shares shall be preferred stock, and the balance, shares, shall be common or general stock.

Said preferred stock shall entitle the holder thereof to receive out of the net earnings, and the company shall be bound to pay a fixed yearly (non) cumulative dividend of (not exceeding eight) per centum, payable (semi) annually before any dividend shall be set apart or paid on the common stock. Such preferred stock shall, at the discretion of the company, be subject to redemption at par on , 19 , or on any dividend day thereafter.

The holders of such preferred stock may choose of the directors, and the remainder of the board shall be chosen by the common or general stockholders.

Such preferred stock may be issued as and when the board of directors shall determine, and the vote or assent of the stockholders shall not be necessary for such issue.

The holders of preferred stock shall in case of liquidation or dissolution of the company, be entitled to be paid in full, both the principal of their shares and the accrued dividends charged before any amount shall be paid to the holders of the general or common stock.

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#### CLAUSES REGULATING BUSINESS, CREATING POWERS, ETC.

The certificate of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any classes of stockholders; Provided, such provisions are not contrary to the laws of this state. These clauses may be greatly varied. (Section 8, ante.)

### Form 62.

#### DIRECTORS TO MAKE BY-LAWS.

The board of directors shall have power without the assent or vote of the stockholders to make, alter, amend and rescind the by-laws of this

corporation, to fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens upon the real and personal property of this corporation.

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**Form 63.**

**DIRECTORS TO SELL ALL THE PROPERTY.**

With the consent in writing and pursuant to the vote of the holders of a majority of the stock issued and outstanding, the directors shall have power and authority to sell, assign, transfer or otherwise dispose of the whole property of this corporation.

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**Form 64.**

**DIRECTORS TO REGULATE EXAMINATION OF BOOKS.**

The directors shall from time to time determine whether and to what extent, and at what times and places and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the directors, or by a resolution of the stockholders.

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**Form 65.**

**TO APPLY SURPLUS EARNINGS.**

That the company may use and apply its surplus earnings or accumulated profits, authorized by law to be reserved, to the purchase and acquisition of property, and to the purchase and acquisition of its own capital stock from time to time, and to such extent and in such manner and upon such terms as its board of directors shall determine, and neither the property, nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the company, shall be regarded as profits for the purpose of the declaration or payment of dividends, unless a majority of the board of directors or a majority of the stockholders shall otherwise determine.

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**Form 66.**

**TO PRESCRIBE THE NUMBER OF DIRECTORS FOR A QUORUM.**

The company may in its by-laws prescribe the number necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number.

**Form 67.****DIRECTORS TO HOLD AND KEEP BOOKS OUT OF STATE.**

The directors may hold their meetings, and have an office, and keep the books of the corporation outside of this state (except either the original or duplicate stock and transfer books—which must be kept in their principal office within this state).

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**Form 68.****CLASSIFICATION OF DIRECTORS.**

The directors shall be divided as equally as may be into five classes. The seats of the directors of the first class shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year; of the third class, at the expiration of the third year; of the fourth class, at the expiration of the fourth year, and of the fifth class, at the expiration of the fifth year, so that one-fifth may be chosen every year.

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**Form 69.****LIMITATION ON LIABILITY OF ORIGINAL SUBSCRIBERS.**

The subscribers hereto, and each other subscriber for the stock of the company, shall at all times be liable for the purchase price of the stock for which he subscribed until ten per cent. of the par value thereof has been paid thereon, but after the payment of said ten per cent. the subscriber shall no longer be liable for any unpaid part of his subscription excepting upon such shares as shall stand of record on the books of the company in the subscriber's name at the time a call or assessment is made; but the holders of such shares of record on the books of the company, and they only, shall be liable for the same.

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**Form 70.****LIMITATION ON POWER TO CREATE MORTGAGES.**

The corporation shall not issue bonds or execute any mortgage or chattel mortgage upon its property or franchises without the consent of the stockholders owning at least ninety per cent. of the preferred stock of the corporation, which consent shall either be in writing and be filed in the office of the corporation, or shall be given by a vote at a stockholders' meeting called for the purpose.

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**Form 71.****LIMITATION ON RIGHT OF STOCKHOLDERS TO EXAMINE BOOKS.**

No stockholder or stockholders holding less than forty per cent. of the total stock issued shall be entitled to an examination of the books of ac-



count or documents, or papers, or vouchers of this company, except by a resolution of the board of directors giving such privilege, and an examination shall then be had only at the time and place, in the manner, to the extent and by the person named in such resolution of the board of directors, excepting always from this restriction such corporate records as are, by statute, open to the inspection of stockholders.

This restriction shall not be construed to limit the right or power of any director or officer of the corporation to examine the books, papers, or vouchers of the said corporation.

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**Form 72.**

**DIRECTORS AND OFFICERS NOT SUBJECT TO REMOVAL.**

Neither the directors nor the members of the executive committee nor the president or vice-president shall be subject to removal during their respective terms of office, by the stockholders or otherwise, nor shall their terms of office be diminished during their tenure.

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**Form 73.**

**DIRECTORS TO SELL PROPERTY ON REQUEST OF MAJORITY OF STOCKHOLDERS.**

The directors shall at any time sell or dispose of all or any part of the real estate, personal property or other assets of any kind or nature that may be owned by the company on the request of a majority of all the stockholders, preferred and common, to be evidenced by a vote at a meeting called on two weeks' notice, or by a writing under the signature of a majority of said stockholders. Said sale shall be made for cash or in exchange for other property as may be directed by said stockholders.

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**Form 74.**

**LIMITATION ON POWER TO CREATE MORTGAGES.**

The corporation shall not have power to mortgage its real property or any part thereof nor to create any lien, by way of mortgage or otherwise, upon its plant and machinery used in its business of manufacturing, except upon the assent in writing first obtained of the holders of two-thirds of the entire capital stock issued and outstanding, or upon the affirmative vote of the holders of a majority of the entire capital stock, issued and outstanding, at a meeting of the stockholders duly called for that purpose. Upon such assent so obtained, or upon such affirmative vote so had, and not otherwise, the directors shall have power to mortgage the said real property, plant and machinery of the corporation, or any part thereof, to secure an issue of bonds or otherwise.

**Form 75.****EXECUTIVE COMMITTEE.**

The board of directors, by resolution passed by a majority of the whole board, may designate three directors to constitute an executive committee, which committee, to the extent provided in said resolution or in the by-laws of the corporation, shall have, and may exercise the power of the board of directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

**THE BY-LAWS.****STATUTORY MATTERS TO BE PROVIDED FOR IN THE BY-LAWS.**

[The references are to sections of the general corporation law, ante.]

(1) The number of directors should be fixed, but not less than three: Section 20.

(2) Provision for the management of the corporate property: Section 20.

(3) Provisions for the regulation and government of the affairs of the company: Section 20.

(4) The time of the annual election should be fixed. The place of the election is the principal office of the company in this state, unless the by-laws otherwise provide: Sections 20 and 136.

(5) Classification of directors: Section 20.

(6) Provide whether officers shall be elected by stockholders or directors: Section 21.

(7) Duties of president, secretary and treasurer: Section 21.

(8) Treasurer's bond: Section 21.

(9) Manner of election or appointment and tenure of other officers, agents, etc.: Section 22.

(10) Filling of vacancies among directors and officers. If no provision is made vacancies are filled by the board of directors: Sections 20 and 22.

(11) Manner of calling and conducting meetings: Section 25.

(12) Qualification of voters, one share is necessary for each vote: Section 20.

(13) Manner of transferring stock and regulations as to transfers: Section 16.

(14) Number of shares to entitle stockholders to one vote: Section 20.

(15) Qualification of directors: Section 20.

(16) Establishment of office outside of state, and keeping books out of state: Sections 6 and 17.

No form of by-laws can be given which could be safely followed under all circumstances. The by-laws are a supplement to the certificate of incorporation and should follow the scheme of organization laid out therein.

As the former requires the services of skillful counsel so the latter require like assistance, and no ready-made form of by-laws could be presented which are valuable for general use. The sections pertaining to the business management of the company are susceptible of change to meet the requirements in each particular case.

**Form 76.**  
**BY-LAWS.**

TITLE; LOCATION; CORPORATE SEAL.

1. The title of the corporation is The \_\_\_\_\_ Company.
2. The principal office shall be in \_\_\_\_\_, Delaware.
3. The corporate seal of the company shall have inscribed thereon the name of the corporation and the year of its creation (189 \_\_\_\_).

DIRECTORS.

4. The property and business of the corporation shall be managed by a board of \_\_\_\_\_ directors, who shall at all times be stockholders, they shall hold office for one year and until others are elected and qualified in their stead.

If the office of any director becomes vacant, by reason of death, resignation or disqualification, the remaining directors, by a majority vote, may elect a successor, who shall hold office for the unexpired term.

MEETINGS OF STOCKHOLDERS.

5. The annual meeting of stockholders shall be held on the \_\_\_\_\_ day of \_\_\_\_\_ in each year, at the principal office of the company in \_\_\_\_\_, at eleven o'clock A. M., when they shall elect, by a plurality vote, by ballot, nine directors to serve for one year and until their successors are elected or chosen and qualified, each stockholder being entitled to one vote, in person or by proxy, for each share of stock standing registered in his name on the \_\_\_\_\_ day in \_\_\_\_\_ preceding the election.

A majority in amount of the stock outstanding shall be requisite to constitute a quorum for an election of directors or the transaction of other business.

The polls for such election shall be opened at twelve o'clock noon and closed at one o'clock in the afternoon.

Notice of the annual meeting shall be published in a newspaper in the city of \_\_\_\_\_ once each week during the month of \_\_\_\_\_ next preceding the meeting.

Special meetings of stockholders shall be called by the secretary by mailing a notice, at least five days prior to the date of meeting, to each stockholder of record at his last known post-office, on the request in writing or by vote of a majority of the board of directors, or on demand in writing by stockholders of record, owning a majority in amount of the entire capital stock of the company.

MEETINGS OF DIRECTORS.

6. Regular meetings of the directors shall be held monthly at the office of the company in \_\_\_\_\_, or, by order of the directors, elsewhere, on a day and at an hour to be fixed by the board.

Notice of such meeting shall be mailed to each director by the secretary at least three days previously.

A majority of the directors in office shall be necessary to constitute a quorum for the transaction of business.

Special meetings of the board may be called by the president, on one day's notice to each director; special meetings shall be called in like manner on the written request of \_\_\_\_\_ members of the board.

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#### POWER OF DIRECTORS.

7. The board of directors shall have power to elect or appoint all necessary officers and committees; to employ agents, factors, clerks and workmen; to fix their compensation; to prescribe their duties; to dismiss any appointed officer or employé without previous notice, and generally to control all the affairs of the company.

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#### COMPENSATION OF DIRECTORS.

8. Directors, as such, shall not receive any stated salary for their services, but by resolution of the board may be allowed ten dollars for attendance at each regular or special meeting of the board, if present at roll-call and until adjournment, unless excused.

Members of either standing or special committees may be allowed like compensation for attending committee meetings.

Additional compensation may be made to directors for special services rendered.

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#### ORDER OF BUSINESS.

9. The order of business at the meetings of the board shall be as follows:

- (1) A quorum being present, the president shall call the board to order.
- (2) The minutes of the last meeting shall be read, and considered as approved, if there be no amendments.
- (3) Reports of officers of the company.
- (4) Reports of committees.
- (5) Unfinished business.
- (6) Miscellaneous business.
- (7) New business.

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#### OFFICERS OF THE COMPANY.

10. The officers of the company shall consist of a president, vice-president, treasurer, secretary, counsel, and such other officers as may from time to time be elected or appointed by the board of directors.

One person may hold the offices of secretary and treasurer.

## OFFICERS, HOW CHOSEN.

11. The directors, by a majority ballot, shall elect a president and vice-president from among their own number, and shall also appoint a secretary, treasurer, counsel, and such other officers as they may deem necessary.

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## DUTIES OF THE PRESIDENT.

12. It shall be the duty of the president to preside at all meetings of the board of directors, to preserve order and to promote the prompt and efficient dispatch of business; to see that all orders and resolutions of the board are carried into effect; to execute all contracts and agreements authorized by the board; to sign all certificates of stock; to keep in safe custody the seal of the company, and, when authorized by the board, to affix the same to any instrument requiring the same, which seal shall always be attested by the signature of the president and of the secretary or the treasurer.

He shall have the general superintendence and direction of all the other officers of the company, and shall see that their duties are properly performed.

He shall submit a complete report of the operations of the company for the year, and the state of its affairs on the 31st day of December, to the directors at their regular meeting in January, and to the stockholders at their annual meeting in \_\_\_\_\_ of each year, and from time to time shall report to the directors all matters within his knowledge which the interests of the company may require to be brought to their notice.

He shall be ex-officio a member of all standing committees, and shall have the general powers and duties of supervision and management usually vested in the office of president of a corporation.

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## THE VICE-PRESIDENT.

13. The vice-president shall be vested with all the powers, and required to perform all the duties of the president in his absence.

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## PRESIDENT PRO TEM.

14. In the absence of the president and vice-president the board may appoint a president pro tem.

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## THE SECRETARY.

15. The secretary shall be ex-officio secretary of the board of directors and of the standing committees; he shall attend all sessions of the board; shall act as clerk thereof, and record all votes and the minutes of all proceedings in a book to be kept for that purpose.

He shall perform like duties for the standing committees when required.

He shall give notice of all calls for instalments to be paid by the stockholders, and shall see that proper notice is given of all meetings of stockholders of the company and of the board of directors.

He shall be sworn to the faithful discharge of his duty, and shall give such bond as may be required by the board of directors.

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#### THE TREASURER.

16. The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the company, and shall deposit all moneys and other valuable effects in the name and to the credit of the company, in such depositories as may be designated by the board of directors.

He shall disburse the funds of the company as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the president and directors, at the regular monthly meetings of the board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the company, and at the regular meeting of the board in January annually a like report for the preceding year.

He shall give the company a bond in a sum, and with security, satisfactory to the board, for the faithful performance of the duties of his office, and the restoration to the company, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the corporation.

The certificates of stock, when signed by the president, shall be countersigned by him.

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#### THE COUNSEL.

17. The counsel shall be the legal adviser of the company and shall receive a stated salary for his services as such.

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#### DUTIES OF OFFICERS MAY BE DELEGATED.

18. In case of the absence of any officer of the company the board of directors may delegate his powers and duties to any other officer, or to any director, for the time being.

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#### STANDING COMMITTEES.

19. There shall be an executive committee of \_\_\_\_\_ directors, appointed by the board, who shall meet at regular periods, or on notice to all by any of their own number; they shall advise with and aid the officers of the company in all matters concerning its interests and the management of its business, and generally perform such duties and exercise such powers as may be directed or delegated by the board of directors,

from time to time, and they shall have authority to exercise all the powers of the board at any time a quorum may fail to attend any regular or special meeting thereof.

20. There shall be a finance committee of \_\_\_\_\_ directors, appointed by the board, who shall attend to and supervise all the fiscal operations of the company, under the direction of the board, and shall examine and audit all accounts of the company at the close of each fiscal year, and at such other times as they may deem necessary.

21. The standing committees shall keep regular minutes of their transactions and cause them to be recorded in a book kept in the office of the company for that purpose, and report the same to the board of directors at their regular meetings.

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#### TRANSFER OF STOCK.

22. All transfers of the stock of the corporation shall be made upon the books of the company by the holder of the shares in person or by his legal representative; but no transfer of stock shall be made within ten days next preceding the day appointed for paying a dividend.

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#### CERTIFICATES TO BE CANCELED.

23. Certificates of stock surrendered shall be canceled by the president or treasurer at the time of transfer.

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#### LOSS OF CERTIFICATE.

24. Any person claiming a certificate or evidence of stock to be issued in place of one lost or destroyed, shall make an affidavit or affirmation of that fact, and advertise the same in such newspaper, and for such space of time as the board of directors may require, describing the certificate; and shall furnish the company with proof of publication by the affidavit of the publisher of the newspaper, and shall give the board a bond of indemnity, with one or more securities, if required, in double the par value of such certificate, against any damage that may arise from issuing a new certificate, whereupon the president and treasurer may, one month after the termination of the advertisement, issue a new certificate, of the same tenor with the one alleged to be lost or destroyed, but always subject to the approval of the board of directors.

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#### CONTRACTS AND AGREEMENTS.

25. No agreement, contract or obligation, other than a check, involving the payment of money or the credit of the company for more than one thousand dollars, shall be made without the order of the board of directors or of the executive committee.

## CHECKS FOR MONEY.

26. All checks, drafts or orders for the payment of money shall be signed by the treasurer and countersigned by either the president or vice-president.

No check shall be signed by both the treasurer and president, or the vice-president, in blank.

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## BOOKS AND ACCOUNTS.

27. The books, accounts and records of the company shall be open to inspection by any member of the board of directors at all times.

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## ALTERATION OF BY-LAWS.

28. The board of directors, by a vote of six members, may alter or amend these by-laws, but no alteration shall be made unless proposed at a regular meeting of the board and considered at a subsequent regular meeting.

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## ORGANIZATION MEETINGS.

## FIRST MEETING OF INCORPORATORS.

Immediately after the filing of the certificate of incorporation with the secretary of state, a meeting of the stockholders should be held at the principal office in Delaware and the preliminary formal organization of the company effected.

The common practice is for the incorporators to sign a written waiver of notice fixing the time and place of the meeting: Form 91.

The certificate of incorporation should be presented, and it is usual to enter it at length in the minutes.

The by-laws should be adopted section by section, and these should also be entered at length upon the minutes: Form 76.

A resolution should be passed by two-thirds in interest of the stockholders authorizing and directing the directors to assess upon each share of stock not fully paid up the balance remaining unpaid on said stock up to the par value thereof, such assessments to be paid to the treasurer at such times and by such instalments as the directors may prescribe.

The principal office should be fixed upon, and authority granted to the agent in charge thereof to keep the original or duplicate stock and transfer books, to show them to those having the right to see them, to keep the name of the company at all times publicly displayed, and, in all respects, to comply with the laws of Delaware in this respect.

It is important that this resolution should be in full form, granting this authority: Form 90.

It is usual to designate some trust company as the agent of the company for this purpose and to direct that the stock certificates be countersigned by such company as transfer agent.

In case the company is formed for the purpose of taking over an existing business, an agreement should be passed upon by the stockholders.



and the directors should be authorized to have it executed, and to take over the property and pay for it in stock of the company, or partly in stock and partly in cash or obligations of the company, as the circumstances of each case require.

It is wise at this point to authorize an increase of stock from the amount named in the certificate of incorporation as the amount with which the company will begin business, to the amount authorized by the charter as the total amount of capital. This can be done by resolution at this time and avoid the necessity of calling another stockholders' meeting, leaving it within the power of the directors, at their option, to issue the remainder of the stock.

The seal of the company should be adopted and the form of the stock certificate should also be passed upon and approved and entered at length in the minutes: Form '81.

There is no necessity for any fixed number of stockholders to be present at this meeting in person; indeed, it is perfectly legal if the stockholders should attend entirely by proxy, provided the proxy be in due form.

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#### FIRST MEETING OF DIRECTORS.

The meeting of the directors need not be held in Delaware; it may be held at any place fixed upon and agreed to by the directors, as evidenced by a waiver signed by them all, fixing the time, place and object of the meeting: Form 94.

The minutes of the stockholders should be read and recommendations, if any, acted upon.

The board should elect the officers of the company.

The oath should be administered to the secretary: Form 95.

The treasurer should give a bond, the form, the amount and the sureties or surety, being passed upon and accepted by the board: Form 96.

If the by-laws provide for an executive committee it should be appointed and the chairman announced.

The secretary should be given authority to procure the corporate books.

A resolution should be placed upon the record in the form required by the bank with which the company is to deposit, authorizing the treasurer to open a bank account with the bank and clearly designating the manner in which checks and drafts should be signed, whether by one officer or more, and what should be the endorsement for deposit.

The directors should also pass a resolution with regard to the office of the company outside of the state of Delaware, and, if desired, should authorize meetings of the board to be held at the office out of the state.

A formal resolution is usual directing the officers in accordance with the resolution of the stockholders to call for the assessment of stock, and also directing the proper officers of the company to purchase the property specified in the minutes of the stockholders' meeting and to issue stock therefor, or for labor done.

Care should be taken in this resolution to recite that the directors

have passed upon the value of the property and labor done, and that in their judgment it is of the value placed upon it and for which the stock is to be issued.

If the stockholders have passed a resolution authorizing the directors to increase the stock beyond the amount named in the charter as the amount with which the company will begin business, a resolution effectuating that increase may be passed.

If it is desired for the corporation to do business outside of the state of Delaware and in any state requiring a certificate to be filed, then authority should be given to the proper officers to execute such certificate in conformity with the laws of the particular state in question.

Finally, a direction should be placed upon the record, that the secretary forthwith file in the office of the secretary of state the statement required by section 4 of "An act to raise revenue," signed by the president and secretary or treasurer, giving the address of the registered office in this state, the name of the agent therein and in charge thereof, and upon whom process against the company may be served, and the names of the resident director and other matters required by statute: Form 105.

These are the formal provisions, and any further or other provisions or special matters should be inserted at length. Any bills which have been paid or are to be paid should be passed upon and audited.

If the company is organized for the purpose of taking over an existing business and has been formed as above stated, it is usual to send out a circular informing the customers, and sometimes a notice is published in the newspapers mentioning the change of the firm into a corporation, with a statement that all of the shares are taken up by the co-partners, in accordance with the facts.

### Form 77.

#### FIRST MEETING OF INCORPORATORS.

At a meeting of the incorporators of the  
Company, held at the office of \_\_\_\_\_, No. \_\_\_\_\_  
street, Wilmington, Delaware (designated in the certificate of incorporation as the location of the principal and registered office of the company),  
on the \_\_\_\_\_ day of \_\_\_\_\_, 189\_\_\_\_, at \_\_\_\_\_ o'clock in  
the \_\_\_\_\_ noon, pursuant to a written waiver of notice signed by all  
of the incorporators fixing the time and place aforesaid, the following  
proceedings were had:

The following incorporators were present in person:

|       |                   |
|-------|-------------------|
| Name. | Number of Shares. |
|-------|-------------------|

The following incorporators were present by proxy:

|       |                |                   |
|-------|----------------|-------------------|
| Name. | Name of Proxy. | Number of Shares. |
|-------|----------------|-------------------|

On motion Mr. \_\_\_\_\_ was elected chairman, and Mr. \_\_\_\_\_  
was appointed secretary of the meeting.

1. The chairman reported that the certificate of incorporation of the company was recorded in the recorder of deeds' office of the county

of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, in Certificate of Incorporation Record, Vol. \_\_\_\_\_, page \_\_\_\_\_, etc., and was filed on the day of \_\_\_\_\_, 1\_\_\_\_\_, in the office of the secretary of state, and presented a certified copy of said certificate of incorporation.

2. The secretary presented and read the waiver of notice of the meeting.

3. The proxies above mentioned were presented and ordered to be filed.

4. The secretary presented a form of by-laws for the regulation of the affairs of the company, which were read article by article and unanimously adopted.

5. Messrs. \_\_\_\_\_ were appointed inspectors of election, and the oath was duly administered to them.

6. The inspectors having duly qualified, the polls were opened and remained open until all of the incorporators had voted. The polls thereupon being closed the vote was canvassed and the inspectors reported that the ballot showed that the following-named persons were unanimously elected directors, \_\_\_\_\_ votes, representing \_\_\_\_\_ shares having been cast for each of said persons, viz.:

(Insert names of directors elected.)

7. Upon motion, duly made and seconded, and by the affirmative vote of all present, it was \_\_\_\_\_

Ordered (1), That in compliance with the laws of the state of Delaware, this corporation have and continuously maintain a principal office and place of business within the state of Delaware, and have an agent at all times in charge thereof, and upon which agent process against this corporation may be served, and therein keep the stock and transfer books for the inspection of all who are authorized to see the same and for the transfer of stock. That the books in which the transfer of stock shall be registered and the books containing the names of the shareholders shall be at all times during the usual hours of business open to the examination of every stockholder at said principal office.

That the name of this corporation be at all times conspicuously displayed at the entrance of its principal office in this state.

And be it further ordered, until this resolution be duly rescinded,

(2) That such office and place of business be in and at the office of the \_\_\_\_\_ Trust Company, Wilmington, Delaware, and that this company be registered with the said Trust Company.

(3) That \_\_\_\_\_ Trust Company being by its charter expressly authorized to act in Delaware as the agent of corporations, domestic and foreign, to the same extent as a natural person, a resident of the state of Delaware, be and hereby is appointed the agent of this corporation for all of the aforesaid purposes and the agent of this company upon whom legal process against this corporation may be served within the state of Delaware, and also the transfer agent of the stock of this company.

8. The secretary was ordered to send a copy of the foregoing resolution, duly certified by him under the corporate seal, to the \_\_\_\_\_ Trust Company.

9. Upon motion, duly made and seconded, and by the affirmative vote of all present, the following preambles and resolutions were adopted:

Whereas, \_\_\_\_\_ ha presented a proposed contract for the acquirement by this company of certain property and rights, and the procurement of certain services and labor (insert a sufficient description of the property and rights to properly disclose the character thereof, and the character and nature of the services and labor), in consideration of the issue of stock of this company to the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), par value; and

Whereas, it appears to the stockholders that such property rights and services are necessary for the business of this company and that the same is of the value of \_\_\_\_\_ dollars;

Resolved, That the board of directors of this company be, and they are hereby authorized and directed to enter into such contract for the purchase of such property rights and the engaging and employment of the services above mentioned for the said price, and to issue said stock in payment thereof: Provided, that, in the judgment of the board of directors, the said property, rights and services are of the value above stated.

10. The secretary presented and read a waiver of notice of assessment and of the time and place of payment thereof, signed by all the incorporators.

11. The board of directors were authorized to assess the stock subscribed by the said incorporators one hundred per cent., payable as and when called for by the board of directors, in accordance with the terms of the waiver.

12. Upon motion, duly made and seconded, and by the affirmative vote of all present the following preamble and resolution were adopted:

Whereas, it has been agreed between each of the incorporators and \_\_\_\_\_ that the stock to be issued in payment of the property authorized to be purchased and the procurement of certain services and labor by the resolution set forth above, shall include the stock subscribed by the incorporators, as evidenced by the certificate of incorporation.

[NOTE.—The last clause is unnecessary if the amount with which the company begins business is paid in in cash, or is not included in the stock to be issued for the property or labor in question.]

Resolved, That the board of directors be and they hereby are authorized and directed to accept said property and said services and labor as full payment of the subscriptions for stock of the incorporators, and to issue full paid stock to the incorporators, or their assigns, to the amount of their respective subscriptions.

13. Upon motion, duly made and seconded, and by the affirmative vote of all present, it was

Resolved, That the board of directors be and they hereby are authorized to issue capital stock of this company to the aggregate amount of \_\_\_\_\_ dollars, in such amounts and proportions as from time to time shall be determined by the board and as may be permitted by law, and to accept in full or partial payment of such stock such prop-

erty and procure the performance of such services and labor as the board may determine shall be necessary for the business of the company.

14. Upon motion, duly made and seconded, and by the affirmative vote of all present, it was

Resolved, That the seal, an impression of which is herewith affixed, be adopted as the corporate seal of the company.

15. A form of stock certificate was presented and upon motion duly made and seconded, was adopted:

16. Resolved, That a copy of each of the following papers be inserted in the minute book for the purpose of reference:

(1) Certified copy of certificate of incorporation. (Found at p. .)

(2) By-Laws. (Found at p. .)

(3) Waiver of notice of this meeting. (Found at p. .)

(4) Waiver of notice of assessment. (Found at p. .)

(5) Waiver of notice of increase of capital stock. (Found at p. .)

(6) Certificate of inspectors of election. (Found at p. .)

(7) Form of proxy used in the meeting. (Found at p. .)

(8) Form of stock certificate. (Found at p. .)

The meeting thereupon adjourned.

Secretary pro tem.

It is not necessarily required that inspectors be appointed and sworn to conduct an election but in case of contest it is valuable evidence, and would have weight in court.

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### Form 78.

#### FIRST MEETING OF DIRECTORS.

The first meeting of the board of directors was held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 1\_\_\_\_, at \_\_\_\_\_ M.

Present: Messrs. \_\_\_\_\_, constituting \_\_\_\_\_ of the board.

Mr. \_\_\_\_\_ was elected temporary chairman, and Mr. \_\_\_\_\_ was elected temporary secretary of the meeting.

1. The secretary presented and read a waiver of notice of the meeting, signed by all the directors, and the same was ordered filed.

2. The minutes of the first meeting of incorporators were read.

3. The following gentlemen were duly elected officers of the company to serve for one year and until their successors are elected and qualify:

President, \_\_\_\_\_; vice-president, \_\_\_\_\_.

4. The following gentlemen were duly appointed secretary and treasurer, respectively, to serve during the pleasure of the board:

The president thereupon took the chair.

5. It was ordered that the secretary take the oath of office and subscribe the written oath in the form presented at this meeting. The secretary thereupon took and subscribed the oath and entered upon the discharge of his duties.

6. It was ordered that the treasurer give a bond in the sum of \_\_\_\_\_

dollars, in the form presented at this meeting, which was approved by the board, and submit said bond to the board for approval as to the sufficiency of the surety. The treasurer thereupon presented his bond, signed by himself as principal, and by as surety, and the same was approved and ordered to be filed.

7. Messrs. \_\_\_\_\_ were appointed members of the executive committee; Mr. \_\_\_\_\_ to be the chairman thereof.

8. The secretary was authorized and directed to procure a corporate seal and the proper corporate books.

9. Upon motion duly made and seconded, it was Resolved, That the treasurer be and he hereby is authorized to open a bank account in behalf of the company with the Bank of \_\_\_\_\_

Further resolved, That until otherwise ordered said bank be and hereby is authorized to make payments from the funds of this company on deposit with it upon and according to the check of this company signed by its \_\_\_\_\_

10. Upon motion, duly made and seconded, it was Resolved, That an office of the company be established and maintained at \_\_\_\_\_, in the city of \_\_\_\_\_, state of \_\_\_\_\_ and that meetings of the board of directors from time to time may be held either at the principal office in the state of Delaware, or at such office in the city of \_\_\_\_\_ or elsewhere, as the board of directors shall from time to time order.

11. Upon motion, duly made and seconded, it was Resolved, That this company enter into a contract offered by \_\_\_\_\_ to this company in accordance with the resolution of the stockholders passed \_\_\_\_\_, authorizing the same, and the board of directors do hereby adjudge and declare that said property and services are of the fair value of \_\_\_\_\_ dollars, and that the same are necessary for the business of this company.

Further resolved, That the proposed agreement for the sale of said property presented at this meeting be and the same hereby is approved as to form, and the \_\_\_\_\_ and \_\_\_\_\_ of the company are hereby authorized and directed to execute said agreement in the name and on behalf of this company and to affix the corporate seal thereto:

Further resolved, That the president and treasurer be and they hereby are authorized and directed to issue to the order of said \_\_\_\_\_ its full paid capital stock of this company to the aggregate amount of \_\_\_\_\_, as provided in said agreement.

12. Upon motion, duly made and seconded, it was Resolved, That an assessment of one hundred per cent. be levied upon the shares of stock subscribed by the incorporators, as evidenced by the certificate of incorporation.

Further resolved, That in compliance with the resolution of the incorporators' meeting, the company accept in payment of said subscriptions

13. Upon motion, duly made and seconded, it was

14. The secretary was ordered to make and file in the office of the secretary of state of Delaware the statement of officers, directors, etc., required by section 4 of "An act to raise revenue" (law of 1899), of Delaware, and the president was also directed to sign such statement.

Resolved, That the president and secretary be and hereby they are authorized and directed to make and to file in the office of the secretary of state a certificate stating that the capital stock of this company has been paid, \$                      in cash, and \$                      by the purchase of property.

16. Resolved, That a copy of each of the following papers be inserted the minute book for the purpose of reference:

- (1) Waiver of notice of this meeting. (Found at p. .)
- (2) Secretary's oath. (Found at p. .)
- (3) Treasurer's bond. (Found at p. .)
- (4) Statement of officers and directors filed in the office of the secretary of state of Delaware. (Found at p. .)
- (5) Certificate of the secretary of state as to filing such statement. (Found at p. .)
- (6) Agreement between \_\_\_\_\_ and this company for the purchase of property and issue of stock therefor. (Found at p. .)
- (7) Certificate of payment of capital stock. (Found at p. .)

Secretary.

CERTIFICATE OF THE SURRENDER OF CORPORATE  
FRANCHISES.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is \_\_\_\_\_

We, the subscribers, being all the incorporators named in the certificate of incorporation of the \_\_\_\_\_ Company,





**Form 81.**

**PREFERRED STOCK.**

[NUMBER]

[SHARES]

INCORPORATED UNDER THE LAWS OF THE STATE OF  
DELAWARE.

Capital stock, - - - - \$  
Preferred stock, \$ Common stock \$  
The Company.

This is to certify, that  
is the registered holder of shares  
of the preferred capital stock of this company, trans-  
ferable only on the books of this company, in person or  
by duly authorized attorney, upon surrender of this  
certificate.

This stock is part of an issue amounting in all to  
\$ par value, authorized by the  
certificate of incorporation of the company.  
filed in the office of the secretary of state  
of the state of Delaware, on the  
day of , 189 .

The holders of this preferred stock are  
entitled to receive, and the company is  
bound to pay a fixed yearly dividend  
of per centum per annum, payable  
half yearly, before any dividend shall be set  
apart or paid on the general stock, and the  
dividends of the preferred stock are cumu-  
lative. The preferred stock is subject to  
redemption at par on the day of  
, 189 , and the holders of the  
preferred stock may choose directors,  
and the holders of the general stock may  
choose directors of the company.

Witness, the seal of the company and the  
signatures of its president and treasurer,  
Wilmington, Delaware, the day  
of , 189 .

President.

Treasurer.

Shares \$100 each.

(If registered, add)  
Countersigned this day of  
The  
Trust Company,  
Wilmington, Delaware, Transfer Agent.  
By

**Form 82.**

NOTICE.—The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

**ASSIGNMENT ON BACK OF CERTIFICATE.**

For value received, hereby sell, assign and transfer unto

Shares of the capital stock, represented by the within certificate, and do hereby irrevocably constitute and appoint

attorney, to transfer the said stock on the books of the within named company, with full power of substitution in the premises.

[L. S.]

Dated , 18 .

In the presence of

**Form 83.****CERTIFICATE OF CHANGE OF LOCATION OF THE PRINCIPAL OFFICE OF**

The

Company.

**RESOLUTION OF DIRECTORS.**

"The board of directors of the Company, a corporation of Delaware, on this day of , A. D. 189 , do hereby resolve and order that the location of the principal office of this corporation within this state be, and the same hereby is, changed from in the county of , to No. street, in the county of

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is

**CERTIFICATE OF CHANGE.**

The Company, a corporation of Delaware, doth hereby certify that the foregoing is a true copy of a resolution adopted by the board of directors by a vote of the members thereof at a meeting held as therein stated.

In witness whereof, said corporation has caused this certificate to be signed by its president and secretary, and its corporate seal to be hereby affixed, the day of , A. D. 189 .

President.

Secretary.

**Form 84.****STOCK CERTIFICATES.****COMMON STOCK.**

INCORPORATED UNDER THE LAWS OF THE STATE OF  
DELAWARE.

Capital stock - - - \$

[NUMBER]

[SHARES]

The

Company.

This is to certify, that

is the registered holder of  
shares of the capital stock of this company,  
transferable only on the books of the com-  
pany by the holder hereof, in person or by  
duly authorized attorney, upon surrender  
of this certificate properly endorsed.

[SEAL.] This certificate will not become valid until  
countersigned by the transfer agent.

Witness, the seal of the company and the  
signatures of its president and treasurer,  
this day of , 189 .

President.

Treasurer.

Shares \$100 each.

(If registered, add)  
Countersigned this day of  
The , 189 .  
Trust Company,  
Wilmington, Delaware, Transfer Agent.  
By

**Form 85.****NOTICE OF ASSESSMENT OF STOCK.**

The Company,  
No. St., Delaware.

Notice is hereby given that by resolution of the board of directors,  
duly authorized by the stockholders, an assessment of per cent. on  
the capital stock of this company is now called for, payable to ,  
treasurer, No. street, , on or before

, 1 . Checks should be drawn to the order of the  
treasurer.

President.

**Form 86.****NOTICE OF SALE OF STOCK FOR NON-PAYMENT OF AS-  
SESSMENTS.**

SALE OF STOCK OF THE

COMPANY.

Notice is hereby given that pursuant to an order of the board of direct-  
ors, and in pursuance of the statute in such case made and provided,

the undersigned, the treasurer of the \_\_\_\_\_ Company,  
 will sell at public auction on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock  
 in the \_\_\_\_\_ noon, at \_\_\_\_\_, \_\_\_\_\_ shares of the capital stock of said com-  
 pany, standing in the name of \_\_\_\_\_, or so many of said shares  
 as will pay \$ \_\_\_\_\_, being the amount of unpaid assessments on said  
 shares now due from said \_\_\_\_\_, and also the interest thereon  
 from \_\_\_\_\_ to the date of sale, and all necessary  
 incidental charges.

\$ \_\_\_\_\_ has been paid to the company on each of said shares.  
 An assessment of \$ \_\_\_\_\_ is now due on each of said shares, which  
 assessment the purchaser must forthwith pay on each share in addition  
 to the amount of his bid.

Dated \_\_\_\_\_

Treasurer.

(Notice of such sale must be given, and the sale duly advertised. See sections 13 and 30, ante.)

### Form 87.

#### AMENDED CERTIFICATE OF INCORPORATION BEFORE PAYMENT OF CAPITAL STOCK.

We, the undersigned, being all the incorporators of the  
 Company, do hereby certify that the original certificate of incorporation  
 of said company was recorded in the office of the recorder of deeds of the  
 county of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, in book \_\_\_\_\_, etc.,  
 and filed on the \_\_\_\_\_ day of \_\_\_\_\_ in the office of the secretary  
 of state at Dover, and that no part of the capital stock has been paid.

The location of the principal office in the state of Delaware is at  
 \_\_\_\_\_ street, in the \_\_\_\_\_ of \_\_\_\_\_, county of \_\_\_\_\_.

The name of the agent therein and in charge thereof, upon whom  
 process against this corporation may be served, is \_\_\_\_\_

We do, therefore, pursuant to the provisions of section 134 of the gen-  
 eral corporation laws of the state of Delaware, amend said original cer-  
 tificate of incorporation so as to read as follows:

(Set forth in full the original certificate of incorporation, including the acknowledgment, with  
 such modifications, changes or alterations as are desired. Then add the usual in testimonium  
 clause and the usual form of acknowledgment.)

### Form 88.

#### FORM OF ACKNOWLEDGMENT.

State of \_\_\_\_\_ }  
 County of \_\_\_\_\_ } ss.:

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_,  
 personally came before me \_\_\_\_\_, a notary public for the  
 state of \_\_\_\_\_

parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

### Form 89.

#### TRANSFER OF SUBSCRIPTION.

The \_\_\_\_\_ Company (incorporated).

Registered with the \_\_\_\_\_ Trust Company, Wilmington, Delaware.

Know all men by these presents, That I, \_\_\_\_\_, in consideration of one dollar, lawful money of the United States, to me paid before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto \_\_\_\_\_ my right, title and interest as a subscriber to and an incorporator of the \_\_\_\_\_ company, a corporation organized under the laws of the state of Delaware, to the extent of \_\_\_\_\_ shares, and I do hereby request and direct the said company to issue the certificate for said shares to and in the name of said \_\_\_\_\_, or such other person as he may name.

In witness whereof, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_

[L. S.]

Sealed and delivered in the presence of \_\_\_\_\_

### Form 90.

#### AUTHORIZATION TO AGENT IN CHARGE OF PRINCIPAL OFFICE.

At a meeting of the \_\_\_\_\_ of \_\_\_\_\_, held at the office of the company on the \_\_\_\_\_ day of \_\_\_\_\_, on motion, duly seconded, it was

“Ordered, (1) That in compliance with the laws of the state of Delaware, this corporation have and continuously maintain a principal office and place of business within the state of Delaware, and have an agent at all times in charge thereof, and upon which agent process against this corporation may be served, and therein keep either the original or duplicate stock and transfer books for the inspection of all who are authorized to see the same and for the transfer of stock. That the said books, in which the transfers of stock shall be registered and the said books containing the names of the shareholders, shall be at all times during the usual hours of business, open to the examination of every stockholder at said principal office.

"That the name of this corporation be at all times conspicuously displayed at the entrance of its principal office in this state.

"And be it further ordered, until this resolution be revoked by the stockholders,

"(2) That such office and place of business be in and at the office of the Trust Company, Wilmington, Delaware, and that this company be registered with the said Trust Company.

"(3) That the Trust Company, being by its charter expressly authorized to act in Delaware as the agent of corporations, domestic and foreign, to the same extent as a natural person, a resident of the state of Delaware, be and hereby is appointed the agent of this corporation for all of the aforesaid purposes and the agent of this company upon whom legal process against this corporation may be served within the state of Delaware, and also the transfer agent of the stock of this company.

"(4) That the stock certificates of this company be registered and countersigned by said trust company as transfer agent."

I, \_\_\_\_\_, the secretary of \_\_\_\_\_ have compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and do hereby certify the same to be a correct and true transcript therefrom and the whole of said original resolution.

Given under my hand and the seal of the company, this \_\_\_\_\_ day of \_\_\_\_\_

Secretary.

[CORPORATE SEAL.]

### Form 91.

## WAIVER OF NOTICE OF MEETING OF INCORPORATORS AND SUBSCRIBERS

Of \_\_\_\_\_ Company (incorporated).

Registered with the \_\_\_\_\_ Trust Company, Wilmington, Delaware.

We, the undersigned, being all the incorporators and all the subscribers to the stock and all the parties named in the certificate of incorporation of the corporation above named, organized under the laws of the state of Delaware, having its principal office with the \_\_\_\_\_ Trust Company, at Wilmington, Delaware, do hereby waive notice of the time, place and purpose of the first meeting of the stockholders of the said company, and do fix the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, as the time, and the office of the \_\_\_\_\_ Trust Company, Wilmington, Delaware, as the place of the first meeting of the incorporators and subscribers to the stock of said company.

And we do hereby waive all the requirements of the statutes of Delaware as to the notice of this meeting, and the publication thereof; and we do consent to the transaction of such business as may come before said meeting.

Dated \_\_\_\_\_

**Form 92.****PROXY. FIRST MEETING OF INCORPORATORS.**

The \_\_\_\_\_ Company (incorporated).  
 Registered with the \_\_\_\_\_ Trust Company, Wilmington, Delaware.  
 Know all men by these presents, That the undersigned, a subscriber  
 for \_\_\_\_\_ shares of the capital stock of the corporation above named,  
 organized under the laws of the state of Delaware, having its principal  
 Delaware office and being registered with the \_\_\_\_\_ Trust Company  
 at Wilmington, do hereby constitute and appoint  
 my true and lawful attorney, in my name, place and stead, to vote upon  
 the stock subscribed for by me or standing in my name, as my proxy,  
 at the meeting of the incorporators and subscribers to the capital stock  
 of the said company, to be held at the company's office, Wilmington, Del-  
 aware, on the \_\_\_\_\_ day of \_\_\_\_\_, or on such other day as the  
 meeting may be thereafter held by adjournment or otherwise, according  
 to the number of votes I am now or may then be entitled to cast, hereby  
 granting the said attorney full power and authority to act for me and in  
 my name at the said meeting or meetings, in voting for directors of the  
 said company or otherwise, and in the transaction of any other business  
 which may come before the meeting, as fully as I could do if personally  
 present, and hereby expressly ratifying and confirming all that my said  
 attorney may do in my place, name and stead.

In witness whereof, I have hereunto set my hand and seal this  
 day of \_\_\_\_\_

Witness:

[L. s.]

**Form 93.****INSPECTORS' CERTIFICATE.**

Meeting of stockholders of \_\_\_\_\_ Company (incorporated).  
 Registered with the \_\_\_\_\_ Trust Company, Wilmington, Delaware.  
 State of \_\_\_\_\_ } ss.:  
 County of \_\_\_\_\_ }

\_\_\_\_\_ and \_\_\_\_\_, being severally sworn upon  
 their respective oaths, do promise and swear that they will faithfully,  
 honestly and impartially perform the duties of inspectors of election, and  
 will to the best of their skill and ability conduct the election to be held  
 this day for directors of the corporation above named, and a true report  
 make of the same.

Subscribed and sworn to this \_\_\_\_\_ day of \_\_\_\_\_, before me.

We, the suscribers, inspectors of election, appointed by the stock-  
 holders of the company above named, at their meeting held this  
 day of \_\_\_\_\_, A. D. \_\_\_\_\_, do report that having taken an oath im-  
 partially to conduct the election, we did receive the votes of the stock-  
 holders by ballot.

We report that                      votes were cast, and that the following persons received the number of votes set opposite their respective names, to wit:

|                |  |                  |
|----------------|--|------------------|
| For Directors. |  | Number of Votes. |
|----------------|--|------------------|

All of which is respectfully submitted this                      day of                      ,  
 1                      , at                     

Inspectors.

[NOTE.—In Delaware it is not necessarily required that inspectors be appointed and sworn to conduct an election, but in case of contest it is valuable evidence, and would have weight in court.]

### Form 94.

## WAIVER OF NOTICE OF THE FIRST MEETING OF THE BOARD OF DIRECTORS

Of                      Company (incorporated).  
 Registered with the                      Trust Company, Wilmington, Delaware.

We, the undersigned, being the board of directors elected by the stockholders of the above named corporation, organized under the laws of the state of Delaware, do hereby waive notice of the time and place of the first meeting of the said board of directors, and of the business to be transacted at said meeting.

We designate the                      day of                      , at                      o'clock in the  
 noon as the time, and                      as the place of the first meeting  
 of the said board of directors. The purpose of said meeting being the  
 election of officers, the authorization of the issuing of the stock of the  
 said company, the authorization of the purchase of property if necessary  
 for the business of the company and the transaction of such other busi-  
 ness as may be necessary or advisable to facilitate and complete the or-  
 ganization of said company for the purpose of carrying on its contem-  
 plated business. And we do hereby waive all the requirements of the  
 laws of the state of Delaware, both as to notice and the publication thereof  
 of the time, place and object of the meeting.

Dated                     

### Form 95.

## SECRETARY'S OATH.

The                      Company (incorporated).  
 Registered with the                      Trust Company, Wilmington, Delaware.

State of                      } ss.:  
 County of                      }

                    , the secretary of the corporation above named,  
 being by me duly sworn upon his oath deposes and says that he will faith-  
 fully discharge the duties of secretary of the aforesaid corporation.

Subscribed and sworn to before me  
 this                      day of



**Form 96.****TREASURER'S BOND.**

The \_\_\_\_\_ Company (incorporated).  
 Registered with the \_\_\_\_\_ Trust Company, Wilmington, Delaware.  
 Know all men by these presents, that we,  
 of \_\_\_\_\_, as principal, and \_\_\_\_\_ of \_\_\_\_\_  
 as surety, are held and firmly bound unto the above named corporation,  
 its successors and assigns, in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_),  
 lawful money of the United States, to be paid to such corporation, its  
 successors and assigns, for which payment, well and truly to be made,  
 we bind ourselves, our executors and administrators, jointly and sever-  
 ally, firmly by these presents.

In witness whereof, We have hereunto set our hands and seals this  
 day of \_\_\_\_\_

The condition of the above obligation is that,

Whereas, the said \_\_\_\_\_ has been duly elected and is about  
 to enter upon the duties of his office as treasurer of the above named  
 company.

Now, therefore, if he shall in all respects fully and faithfully discharge his  
 duties as such treasurer, so long as he shall hold the said office or continue  
 therein during the term for which he is now or may hereafter be elected,  
 appointed, or hold over, and also, if, in case of his death, resignation or  
 removal from office from any cause, all the books, papers, vouchers,  
 money or other property of whatever kind in his possession belonging to  
 the corporation, shall be forthwith restored to the corporation, then this  
 obligation is to be void, otherwise to be in full force and virtue.

[L. s.]

[L. s.]

Signed, sealed and delivered in the presence of \_\_\_\_\_

**Form 97.****WAIVER OF NOTICE BY STOCKHOLDERS OF PAYMENT OF ASSESSMENT.**

Waiver of notice by the stockholders of \_\_\_\_\_ Company  
 (incorporated).

Registered with the \_\_\_\_\_ Trust Company, Wilmington, Delaware.

We, the undersigned, being all subscribers to the capital stock with  
 which this company begins business, do hereby waive thirty days' notice  
 of the time and place of the payment of such subscription, and we do also  
 waive all the requirements of the laws of the state of Delaware as to  
 notice of assessment and payment, and we agree to pay any part or all of  
 the same to the treasurer of the company on demand, and at such time  
 and in such amounts as the company, by its board of directors, may direct.

Dated \_\_\_\_\_

**Form 98.****WAIVER OF NOTICE OF ASSESSMENT.**

(Fuller Form.)

We, the undersigned, being all the incorporators, all the subscribers to the capital stock and all the stockholders of \_\_\_\_\_ Company, do hereby waive all notice of a meeting, and all statutory requirements relating to the holding of any meeting, to consider the subject of assessing and calling for the balance remaining unpaid on the capital stock of said company, and do hereby consent that said subject be considered at meeting of the corporation to be held on \_\_\_\_\_ the day of \_\_\_\_\_, 1 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, and so consent and agree that at said meeting, or at any other meeting, the board of directors be authorized, empowered and directed to assess upon all capital stock the entire balance remaining unpaid thereon up to the par value thereof, and to assess and call for the payment of such sums without any notice whatever, by publication or otherwise, and do hereby waive all our rights to publication of notice of any such assessment, and all statutory requirements concerning such assessment, and do hereby consent and agree to pay the balance remaining unpaid on the shares of capital stock of said company held by us respectively, up to the par value of said shares, without any such notice or publication whatever, and immediately upon demand of the board of directors.

Dated \_\_\_\_\_

Witness: \_\_\_\_\_

**Form 99.****INCREASE OF CAPITAL STOCK, CONSENT AND WAIVER OF NOTICE OF MEETING.**

We, the undersigned, being all the incorporators and subscribers to the capital stock of \_\_\_\_\_ Company, organized under the laws of the state of Delaware, do hereby waive notice of the time and place of a meeting for the purpose of considering the advisability of increasing the company's capital stock and the number of shares therein, and waive all statutory requirements as to publication or service of such notice; do hereby consent that said matters be considered at a meeting of the corporation to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 1 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, and do likewise consent and agree that at said meeting, or any other meeting, the directors be authorized, empowered and directed, to take all proper steps in said matters and to increase the company's capital stock and the number of shares therein until the same shall reach the amounts named in the company's certificate of incorporation as its total authorized capital stock, and that the said board of directors be authorized, empowered and directed, to issue the additional shares of the company's capital stock, at such times and in such amounts as said board shall determine, up to the amount of the company's total authorized capital stock.

Dated at \_\_\_\_\_ 1. \_\_\_\_\_.

Witness: \_\_\_\_\_

**Form 100.****PROXY. STOCKHOLDERS' MEETING.**

The \_\_\_\_\_ Company (incorporated).  
Registered with the \_\_\_\_\_ Trust Company, Wilmington, Delaware.

Know all men by these presents, That the undersigned, being the owner of \_\_\_\_\_ shares of the capital stock of the corporation above named, do hereby constitute and appoint \_\_\_\_\_, my true and lawful attorney, in my name, place and stead, to vote upon the stock owned by me or standing in my name, as my proxy, at the \_\_\_\_\_ meeting of the stockholders of the said company, to be held at the company's office, Wilmington, Delaware, on the \_\_\_\_\_ day of \_\_\_\_\_, or on such other day as the meeting may be thereafter held by adjournment or otherwise, according to the number of votes I am now or may then be entitled to cast, hereby granting the said attorney full power and authority to act for me and in my name at the said meeting or meetings, in voting for directors of the said company or otherwise, and in the transaction of such other business as may come before the meeting, as fully as I could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may do in my place, name and stead.

In witness whereof, I have hereunto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_

[L. S.]

Witness: \_\_\_\_\_

**Form 101.****CERTIFICATE TO BANK.**

The \_\_\_\_\_ Company (incorporated).  
Registered with the \_\_\_\_\_ Trust Company, Wilmington, Delaware.

At a meeting of the directors of this company, held on the \_\_\_\_\_ day of \_\_\_\_\_, on motion duly seconded, it was

“Resolved, That \_\_\_\_\_, the treasurer of this company, be and he hereby is instructed and empowered to open and keep an account of deposit and discount with the \_\_\_\_\_ bank, \_\_\_\_\_, in the name and for the use of this company, to deposit in said bank to the credit of this company from time to time, any and all moneys, checks, drafts, notes, acceptances, or other evidences of indebtedness (whether belonging to this company, or otherwise), which may now be or may hereafter come into its possession, and in the name of this company to withdraw the same or any part or all of the proceeds thereof, to pledge the credit of this company as the said treasurer may from time to time find necessary or convenient, and for these and all other purposes, to sign, endorse, accept, make, execute and deliver any and all checks, notes, drafts and bills of exchange.”

The undersigned, the secretary of the company above named, has com-

pared the foregoing resolution with the original thereof as recorded in the minute book of said company, and hereby certifies the same to be a correct and true transcript therefrom and the whole of said original resolution.

Witness the seal of this company, attested by me.

Dated

Attest:

[CORPORATE SEAL.]

Secretary.

### Form 102.

## NOTICE OF ANNUAL MEETING

Of \_\_\_\_\_ Company (incorporated).  
Registered with the \_\_\_\_\_ Trust Company, Wilmington, Delaware.  
The annual meeting of the stockholders of this company will be held on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at the office of the \_\_\_\_\_ Trust Company, Wilmington, Delaware, for the purpose of electing a board of directors and receiving and acting upon the reports of the officers (insert any other business to be transacted), and for the transaction of such other business as may properly come before the meeting.

In accordance with the laws of the state of Delaware, no stock can be voted on which has been transferred on the books of the company within twenty days next preceding this election.

Dated

Secretary.

### Form 103.

## RESIGNATION.

The \_\_\_\_\_ Company (incorporated).  
Registered with the \_\_\_\_\_ Trust Company, Wilmington, Delaware.  
WILMINGTON, DELAWARE,

To the president and board of directors of \_\_\_\_\_ Company.

Gentlemen: I hereby tender my resignation as director and of the company, the same to take effect at once, or at your option at any time before the next annual election of directors and officers.

Yours truly,

### Form 104.

## CERTIFICATE OF DISSOLUTION BY VOTE OF DIRECTORS AND CONSENT OF STOCKHOLDERS (NOT UNANIMOUS).

The location of the principal office in this state is at No. \_\_\_\_\_ street, in the \_\_\_\_\_ of \_\_\_\_\_, county of \_\_\_\_\_

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is \_\_\_\_\_

We, the undersigned, being a majority of the board of directors of the \_\_\_\_\_, do hereby certify, that at a meeting of the said board, called for that purpose and held on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 1\_\_\_\_\_, said board by a majority of the whole board, did adopt the following resolution:

Resolved, That in the judgment of this board, it is advisable and most for the benefit of the \_\_\_\_\_ that the same should be forthwith dissolved; and to that end it is ordered, that a meeting of the stockholders be held on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 1\_\_\_\_\_, at the office of the company, in the city of \_\_\_\_\_, to take action upon this resolution; and further, that the secretary forthwith give notice of said meeting, and of the adoption of this resolution, within ten days from this date, by publishing the said resolution, with a notice of its adoption, in the \_\_\_\_\_, a newspaper published in the county wherein the principal office of the company is located, for at least four weeks, once a week, successively, and by mailing a written or printed copy of the same to each and every stockholder of this company in the United States.

In witness whereof, we have hereunto set our hands and affixed the corporate seal of said company, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 1\_\_\_\_\_.

[CORPORATE SEAL.]

Attest:

Secretary.

#### CONSENT OF STOCKHOLDERS TO DISSOLUTION.

Whereas, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 1\_\_\_\_\_, the directors of the \_\_\_\_\_, by a majority vote of the whole board, at a meeting called for that purpose, of which meeting every director received at least three days' notice, did adopt a resolution in the words or to the effect following, to wit:

"Resolved, That in the judgment of this board it is advisable and most for the benefit of the \_\_\_\_\_ that the same should be forthwith dissolved; and to that end it is ordered, that a meeting of the stockholders be held on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 1\_\_\_\_\_, at the office of the company, in \_\_\_\_\_, to take action upon this resolution; and further, that the secretary forthwith give notice of said meeting and of the adoption of this resolution, within ten days from this date, by publishing the said resolution with a notice of its adoption in the \_\_\_\_\_, a newspaper published in the county wherein the principal office of the company is located, for at least four weeks, once a week, successively, and by mailing a written or printed copy of the same to each and every stockholder of this company in the United States."

And whereas, the secretary of the said company did give notice of the meeting of the stockholders, called by said resolution as required by law and the said resolution:

Now, therefore, we, the subscribers, being more than two-thirds in interest of all the stockholders, being met together in pursuance of said

resolution and notice, have consented and do hereby consent that the said company be forthwith dissolved as proposed in said resolution.

Witness our hands, this            day of            , A. D. 1       .

Shares.                                  Shares.

Shares.                                  Shares.

Attest:

Secretary.

State of \_\_\_\_\_ } ss.:  
County of \_\_\_\_\_ }

, being duly sworn, on his oath says, that he is  
 secretary of the \_\_\_\_\_, that he saw \_\_\_\_\_, being  
 more than two-thirds in interest of the stockholders of said company, at  
 a meeting duly called for the purpose as above recited, sign the foregoing  
 certificate of consent as their voluntary act and deed, and that deponent  
 at the same time subscribed the same as attesting witness; and deponent  
 further says, that on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, he mailed  
 a printed copy of the resolution above recited, with a notice of the adop-  
 tion thereof, to each and every stockholder of said company residing in  
 the United States, and also caused the same to be duly published as re-  
 quired by the said resolution; and deponent further says, that the said  
 resolution of the board of directors was duly adopted upon lawful notice  
 as in the certificate above recited.

Sworn and subscribed before me, this  
day of \_\_\_\_\_, A. D. 1\_\_\_\_\_.

State of \_\_\_\_\_ } ss.:  
County of \_\_\_\_\_ }

\_\_\_\_\_, of lawful age, being duly sworn according to law, doth depose and say, that he is \_\_\_\_\_ of \_\_\_\_\_, a newspaper printed and published in the city of \_\_\_\_\_ and county of \_\_\_\_\_ and state of Delaware, and that the notice, of which the annexed printed slip is a true copy, has been published in said newspaper, successively, for the period of \_\_\_\_\_ commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Sworn and subscribed before me, the  
day of \_\_\_\_\_, A. D. 1\_\_\_\_\_.

(Attach copy of advertisement.)

LIST OF DIRECTORS AND OFFICERS AT THE TIME OF DISSOLUTION.

As required by the "General Corporation Laws" of the state of Delaware, the board of directors of the \_\_\_\_\_ company render the following statement to be filed in the office of the secretary of state of the state of Delaware, upon the dissolution of said company.

The location of the principal office in this state is at No. \_\_\_\_\_ street, in the \_\_\_\_\_ of \_\_\_\_\_ county of \_\_\_\_\_

The name of the agent therein and in charge thereof, and upon whom process against the corporation may be served, is

The following is a list of the names and residences of the directors and officers of said company:

|        |  |             |
|--------|--|-------------|
| Names. |  | Residences. |
|--------|--|-------------|

The officers of the company are:

|                   |           |
|-------------------|-----------|
| President         | Secretary |
| Vice-President    | Treasurer |
| 2d Vice-President |           |
| 3d Vice-President |           |

Dated \_\_\_\_\_, 189 .

The foregoing statement is correct and true.

|            |            |
|------------|------------|
| Attest:    | President. |
| Secretary. |            |

### Form 105.

## ANNUAL REPORT.

### ANNUAL RETURN OF CORPORATIONS TO THE SECRETARY OF STATE.

As required by the laws of the state of Delaware the company renders the following statement, to be filed in the office of the secretary of state:

The location of the principal office in the state of Delaware is at \_\_\_\_\_ county of \_\_\_\_\_ Delaware.

The agent of the company in charge of said principal office is \_\_\_\_\_ Trust Company, a domestic corporation, whose location is at \_\_\_\_\_ Delaware.

The names and addresses of the officers and director resident in Delaware are as follows:

|                   |  |          |
|-------------------|--|----------|
| Name.             |  | Address. |
| President         |  |          |
| Vice-President    |  |          |
| Treasurer         |  |          |
| Resident Director |  |          |

The number and par value of shares of capital stock issued and outstanding is \_\_\_\_\_ shares.

The foregoing statement is correct and true.

Dated \_\_\_\_\_ 1 .

|            |            |
|------------|------------|
| Attest:    | President. |
| Secretary. |            |

[NOTE.—The above form is drawn in conformity with the opinion of the Hon. J. H. Hughes secretary of state, and applies to the general class of corporations designated as "all other corporations . . . not hereinbefore provided for," under section 4, of "An act to raise revenue for the state by taxing certain corporations." The report must be made by the president, treasurer, or other proper officers, and filed on or before the first Tuesday of January annually.]

## Form 106.

## CERTIFICATE OF INCORPORATION

OF THE

PITTSBURG AND BALTIMORE COAL COMPANY.

INCORPORATED.

REGISTERED WITH THE

DELAWARE TRUST COMPANY, WILMINGTON, DELAWARE.

1. The name of the corporation is the

PITTSBURG AND BALTIMORE COAL COMPANY.

2. The location of its principal office is Wilmington, Delaware, and said office is to be registered with the DELAWARE TRUST COMPANY.

3. The objects and purposes for which, and for any of which, the corporation is formed, are: To purchase, take on lease, or otherwise acquire any mines, mining rights and lands and coal lands in Pennsylvania, or elsewhere, and any interest therein, and to explore, work, exercise, develop and turn to account the same, to mine, prepare for market and sell or otherwise dispose of bituminous coal, manufacture coke or any by-product of coal or coke, and sell and otherwise dispose of the same, or either of them, to quarry, smelt, refine, dress, amalgamate and prepare for market ore metal and mineral substances of all kinds, or any combination or manufacture thereof, and to buy and sell coal and coke or any bi-product thereof, or any other mineral substance, and to carry on any other operation which may seem conducive to any of the company's objects: to buy, sell, manufacture and deal in minerals, plant machinery, implements, conveniences, provisions, goods, wares, merchandise and things capable of being used in connection with mining operations, or required by workmen and others employed by said company; to construct, carry out, maintain, improve, manage, work, control, operate and superintend, own, lease or otherwise control any roads, ways, bridges, railways, tramways, tracks, reservoirs, water courses, aqueducts, wharves, factories, furnaces, mills, crushers, houses, hydraulic works, water works, warehouses, coal yards, and other works and conveniences which may seem directly or indirectly conducive to any of the objects of the company, and to build and own and lease and sell houses, and to buy, lay out and sell in lots or otherwise dispose of lands, tenements and hereditaments, and to contribute to subsidize or otherwise aid or take part in any such operations, and for these purposes to purchase, own, charter and operate steam boats, steam tugs, barges and other boats and barges, landings and other appliances and equipment.

In furtherance of, and not in limitation of, the general powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the company shall have also the following powers:



To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

To manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description.

To acquire the good will, rights and property, and to undertake the whole or any part of the assets and liabilities, of any person, firm, association or corporation, and to pay for the same in cash, stock of this company, bonds or otherwise.

To apply for, purchase, or otherwise acquire, and to hold, own, use, operate, and to sell, assign, or to otherwise dispose of, to grant licenses in respect of or otherwise turn to account any and all inventions, improvements and processes used in connection with, or secured under, letters-patent of the United States or elsewhere, or otherwise, and with a view to the working and development of the same to carry on any business, whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants, bonds, debentures and other negotiable or transferable instruments.

To have one or more offices, to carry on all or any of its operations and business, and without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property of every class and description, in any state, district, territory or colony in the United States, and in any foreign country or place.

In general to carry on any other business in connection therewith, whether manufacturing or otherwise, and with all the powers conferred by the laws of Delaware upon corporations under the act hereinafter referred to.

The duration of the corporation shall be unlimited.

4. The total authorized capital stock of this corporation is five hundred thousand dollars (\$500,000), divided into five thousand (5,000) shares of one hundred dollars (\$100) each. There being but one class of stock, to wit: Common stock.

5. The names and residences of the incorporators and the number of shares subscribed for by each, the aggregate of which (\$1,000) is the amount of capital with which the company will commence business, are as follows:

| NAME.               | RESIDENCE.        | SHARES. |
|---------------------|-------------------|---------|
| EDWARD E. ROBBINS,  | Greensburg, Pa.,  | 4       |
| EDWARD M. STECK.    | Pittsburg, Pa.,   | 3       |
| GARDNER W. KIMBALL, | Wilmington, Del., | 3       |

6. This corporation is to have perpetual existence.

The affairs of this corporation are to be conducted by its directors, who shall be elected annually on the fourth Monday in January in each year at the office of the company in the city of Pittsburg, Pa.; said directors shall appoint or elect such officers as the by-laws may prescribe.

This corporation may become seized and possessed of real and personal estate of the value of two million (\$2,000,000) dollars.

The highest amount of indebtedness or liability which this corporation may at any time incur is the sum of two million (\$2,000,000) dollars.

The private property of the stockholders shall not be subject to the payment of the corporate debts to any extent whatever.

7. The board of directors shall have power without the assent or vote of the stockholders to make, alter, amend and rescind the by-laws of this corporation, to fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens without limit as to amount upon the real and personal property of this corporation.

With the consent in writing and pursuant to the vote of the holders of a majority of the stock issued and outstanding, the directors shall have power and authority to sell, assign, transfer or otherwise dispose of the whole property of this corporation.

The directors shall from time to time determine whether and to what extent, and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the directors, or by a resolution of the stockholders.

The board of directors, in addition to the powers and authorities by statute and by the by-laws expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the statute, of the charter, and to any regulations that may from time to time be made by the stockholders, provided that no regulations so made shall invalidate any provisions of this charter, or any prior acts of the directors which would have been valid if such regulations had not been made.

The corporation may by its by-laws confer powers additional to the foregoing upon the directors, and may prescribe the number necessary to constitute a quorum of its board of directors, which number may be less than a majority of the whole number.

The board of directors may, by resolution passed by a majority of the whole board, designate two or more of their number to constitute an executive committee, which committee shall for the time being, as provided in said resolution or in the by-laws of said corporation, have and exercise all the powers of the board of directors in the management of the business and affairs of the company, and have power to authorize the seal of the corporation to be affixed to all papers which may require it.

Neither the directors nor the members of the executive committee nor

the president nor vice-president shall be subject to removal during their respective terms of office except for cause, nor shall their terms of office be diminished during their tenure.

Both stockholders and directors shall have power to hold meetings, to have one or more offices, and to keep the books of the corporation (subject to the provisions of the statute) outside of this State, at such places as may be from time to time designated by them.

We, the undersigned, for the purpose of forming a corporation in pursuance of an act of the legislature of the State of Delaware, entitled "An Act Providing a General Corporation Law," do make, record and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals.

|                     |         |
|---------------------|---------|
| EDWARD E. ROBBINS,  | [L. S.] |
| E. M. STECK,        | [L. S.] |
| GARDNER W. KIMBALL, | [L. S.] |

In presence of  
EDWARD T. PRICE.

[10 cent internal revenue stamp canceled.]

Recorded in the Recorder of Deeds office, at Wilmington, Delaware, in Record A, Vol. 1, Page 182, etc.

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### Form 107.

## CERTIFICATE OF INCORPORATION

OF THE

VALLEY TELEPHONE COMPANY.

INCORPORATED.

REGISTERED WITH THE

DELAWARE TRUST COMPANY, WILMINGTON, DELAWARE.

1. The name of the corporation is the

VALLEY TELEPHONE COMPANY.

2. The location of its principal office is Wilmington, Delaware, and said office is to be registered with the DELAWARE TRUST COMPANY.

3. The objects and purposes for which, and for any of which, the corporation is formed, are:

1. To carry on the telephone, telegraph and messenger business in all their branches.

2. To construct, maintain, lay down on the ground, and under the same, establish, fix and carry out all necessary cables, wires and lines; set poles and in all things, and in such manner as may be necessary and expedient generate, accumulate, distribute and supply electricity; and telephone, telegraph and messenger service to any and all persons, and to all places, both public and private.

3. To buy, sell, manipulate and deal both wholesale and retail in commodities, articles and things of all kinds which can be conveniently dealt in by the company in connection with any of its objects.

4. To enter into contracts with such parties and on such terms as may seem expedient, and in particular to customers of, and persons having dealings with the company.

In furtherance of, and not in limitation of, the general powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the company shall have also the following powers:

To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

To manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description.

To acquire the good will, rights and property, and to undertake the whole or any part of the assets and liabilities, of any person, firm, association or corporation, and to pay for the same in cash, stock of this company, bonds or otherwise.

To apply for, purchase, or otherwise acquire, and to hold, own, use, operate, and to sell, assign, or to otherwise dispose of, to grant licenses in respect of or otherwise turn to account any and all inventions, improvements and processes used in connection with, or secured under, letters-patent of the United States or elsewhere, or otherwise, and with a view to the working and development of the same to carry on any business, whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants, bonds, debentures and other negotiable or transferable instruments.

To have one or more offices, to carry on all or any of its operations and business, and without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property of every class and description, in any state, district, territory or colony of the United States, and in any foreign country or place.

In general to carry on any other business in connection therewith, whether manufacturing or otherwise, and with all the powers conferred by the laws of Delaware upon corporations under the act hereinafter referred to.

The duration of the corporation shall be unlimited.

4. The total authorized capital stock of this corporation is thirty thousand dollars (\$30,000), divided into six hundred shares (600) of fifty dollars (\$50) each, to be issued as the common stock of said corporation.

5. The names and residences of the incorporators and the number of

shares subscribed for by each, the aggregate of which (\$30,000.00) is the amount of capital with which the company will commence business. are as follows:

| NAME.               | RESIDENCE.        | SHARES. |
|---------------------|-------------------|---------|
| FRANK BRANDON,      | Lebanon, O.,      | 596     |
| GARDNER W. KIMBALL, | Wilmington, Del., | 3       |
| EDWARD T. CANBY,    | Wilmington, Del., | 1       |
|                     |                   | <hr/>   |
|                     |                   | 600     |

6. This corporation is to have perpetual existence.

The affairs of this corporation are to be conducted by its directors, who shall be elected annually on the second Tuesday in December in each year at the Lebanon Exchange office of the company in Lebanon, O.; said directors shall appoint or elect such officers as the by-laws may prescribe.

This corporation may become seized and possessed of real and personal estate of the value of five hundred thousand (\$500,000) dollars.

The highest amount of indebtedness or liability which this corporation may at any time incur is the sum of two hundred thousand (\$200,000) dollars.

The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

7. The board of directors shall have power without the assent or vote of the stockholders to make, alter, amend and rescind the by-laws of this corporation, to fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens without limit as to amount upon the real and personal property of this corporation.

With the consent in writing and pursuant to the vote of the holders of a majority of the stock issued and outstanding, the directors shall have power and authority to sell, assign, transfer or otherwise dispose of the whole property of this corporation.

The directors shall from time to time determine whether and to what extent, and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the directors, or by a resolution of the stockholders.

The board of directors, in addition to the powers and authorities by statute and by the by-laws expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the statute, of the charter, and to any regulations that may from time to time be made by the stockholders, provided that no regulations so made shall invalidate any provisions of this charter, or any prior acts of the directors which would have been valid if such regulations had not been made.

The corporation may in its by-laws confer powers in addition to the foregoing upon the directors, and may prescribe the number necessary to constitute a quorum of its board of directors, which number may be less than a majority of the whole number.

The board of directors may, by resolution passed by a majority of the whole board, designate two or more of their number to constitute an executive committee, which committee shall for the time being, as provided in said resolution or in the by-laws of said corporation, have and exercise all the powers of the board of directors in the management of the business and affairs of the company, and have power to authorize the seal of the corporation to be affixed to all papers which may require it.

Neither the directors nor the members of the executive committee nor the president nor vice-president shall be subject to removal during their respective terms of office except for cause, nor shall their terms of office be diminished during their tenure.

Both stockholders and directors shall have power to hold meetings, to have one or more offices, and to keep the books of the corporation (subject to the provisions of the statute) outside of this state, at such places as may be from time to time designated by them.

We, the undersigned, for the purpose of forming a corporation in pursuance of an act of the legislature of the State of Delaware, entitled "An Act Providing a General Corporation Law," do make, record and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals.

|                     |         |
|---------------------|---------|
| FRANK BRANDON,      | [L. S.] |
| GARDNER W. KIMBALL, | [L. S.] |
| EDWARD T. CANBY,    | [L. S.] |

In presence of  
EDWARD T. PRICE.

[10 cent internal revenue stamp canceled.]

Recorded in the Recorder of Deeds office, at Wilmington, Delaware, in Record A, Vol. 1, Page 82, etc.

### Form 108.

## CERTIFICATE OF INCORPORATION OF

LA FLOR DE COSTA RICA COFFEE ESTATES COMPANY.  
INCORPORATED.

REGISTERED WITH THE  
DELAWARE TRUST COMPANY, WILMINGTON, DELAWARE.

1. The name of the corporation is

LA FLOR DE COSTA RICA COFFEE ESTATES COMPANY.

2. Its principal office and place of business in the State of Delaware is to be located in the city of Wilmington, county of New Castle.

3. The nature of the business and the objects and purposes proposed to be transacted, promoted and carried on, are to do any or all of the things herein mentioned as fully as to the same extent as natural persons might or could do, and in any part of the world, viz., to purchase or otherwise acquire, own, hold, lease, control, manage, and operate farms, plantations or estates, and the business and personal property incident thereto, and particularly to purchase, acquire, control, manage and operate the plantation or estate known as "La Flor," at Peralta, in the Canton of Turrialba, Costa Rica, and the buildings and personal property thereon, and to issue the whole or any part of the capital stock of the company in payment therefor; to raise, produce, harvest, market, buy and sell coffee, sugar, tobacco, corn and all other products of the earth, including all kinds of timber, and woods such as mahogany, cedar, and other tropical and semi-tropical trees, to breed and raise, buy and sell horses, cattle and all kinds of live stock; to do anything and everything necessary or desirable in the operation of the estates of the company, or tending to advance the company's interests.

In furtherance, and not in limitation, of the general powers conferred by the laws of Delaware, it is expressly provided that this corporation shall also have the following powers, viz.:

To take, own, hold, deal in, mortgage, or otherwise lien, and to lease, sell, exchange, transfer, or in any maner dispose of, real property, wherever situated.

To manufacture, purchase or acquire in any lawful manner, and to hold, own, mortgage, pledge, sell, transfer, or in any manner dispose of, and to deal and trade in, goods, wares, merchandise and property of any and every class and description.

To acquire the good will, rights and property of any person, firm, association or corporation; to pay for the same in cash, the stock of this company, bonds or otherwise; to hold or in any manner to dispose of, the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

To apply for, or in any manner to acquire, and to hold, own, use and operate, or to sell or in any manner dispose of, and to grant license or other rights in respect of, in any manner deal with any and all rights, inventions, improvements and processes used in connection with or secured under letters-patent or copyrights of the United States or other countries, and to work, operate or develop the same, and to carry on any business, manufacturing or otherwise, which may directly or indirectly effectuate these objects or any of them.

To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue

promissory notes, bills of exchange, warrants, bonds, debentures and other negotiable or transferable instruments.

To have one or more offices to carry on all or any of its operations and business, and without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property of every class and description, in any state, district, territory or colony of the United States, and in any foreign country or place.

To do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world as principals, agents, contractors, trustees or otherwise.

In general, to carry on any other business in connection therewith, whether manufacturing or otherwise, and with all the powers conferred by the laws of Delaware upon corporations under the act hereinafter referred to.

4. The amount of the total authorized capital stock of this corporation is two hundred thousand dollars (\$200,000), divided into two thousand shares of one hundred dollars (\$100) each.

5. The names and places of residence of each of the original subscribers to the capital stock are as follows:

| NAME.                 | RESIDENCE.                     | SHARES. |
|-----------------------|--------------------------------|---------|
| FEDERICO PERALTA,     | San José, Costa Rica,          | 3       |
| JUAN J. ULLOA G.,     | San José, Costa Rica,          | 3       |
| ALEXANDER S. BACON,   | Brooklyn Borough, N. Y. City,  | 3       |
| EDWARD O. SCHERNIKOW, | Manhattan Borough, N. Y. City, | 3       |
| DAVID BENNETT KING,   | Manhattan Borough, N. Y. City, | 3       |
| CHARLES HENRY PHELPS, | Manhattan Borough, N. Y. City, | 3       |
| EDWARD T. CANBY,      | Wilmington, Delaware,          | 3       |

6. The existence of this corporation is to be perpetual.

7. The affairs of the corporation are to be conducted by the officers and persons fixed by the by-laws: and such persons are to be chosen at the times and places fixed by the by-laws.

8. The corporation may become seized and possessed of either real or personal estate, or both, to the value of ten million dollars (\$10,000,000).

9. The amount of indebtedness or liability which the corporation may at any time incur is ten million dollars (\$10,000,000).

10. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

11. The directors shall have power to make and to alter the by-laws; to fix the amount to be reserved as working capital, and to authorize and cause to be executed mortgages and liens, without limit as to amount, upon the property and franchises of the corporation.

With the consent, in writing, and pursuant to a vote of the holders of seventy per cent. of the capital stock issued and outstanding, the directors shall have authority to dispose in any manner of the whole property of this corporation.

The by-laws shall determine whether and to what extent the accounts



and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account, or book, or document of the corporation, except as conferred by law or the by-laws, or by resolution of the stockholders.

The stockholders or directors shall have power to hold their meetings and keep the books outside of the State of Delaware, at such places as may be from time to time designated.

It is the intention that the objects specified in the third paragraph hereof shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause or paragraph in the certificate of incorporation, but that the objects specified in each of the clauses of this charter shall be regarded as independent objects.

We, the undersigned, for the purpose of forming a corporation under the laws of the State of Delaware, do make, record and file this certificate, and do certify that the facts herein stated are true; and we have accordingly hereunto set our respective hands and seals.

Dated at the city of New York, State of New York, this 29th day of June, 1899.

In the presence of

HORACE K. WOOD.

FEDERICO PERALTA, [SEAL.]

JUAN J. ULLOA G., [SEAL.]

ALEXANDER S. BACON, [SEAL.]

EDWARD O. SCHERNIKOW, [SEAL.]

DAVID BENNETT KING, [SEAL.]

CHARLES HENRY PHELPS, [SEAL.]

EDWARD T. CANBY, [SEAL.]

Recorded in the Recorder of Deeds office, at Wilmington, Delaware, in Record A, Vol. 1, Page 108.



## APPENDIX.

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### UNITED STATES STAMP TAXES.

Including the general provisions and the **taxes particularly applying to corporations** under the war revenue act of June 13, 1898.

#### ADHESIVE STAMPS.

SECTION 6. That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule. . . .

SECTION 7. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the court, and such instrument, document, or paper, as aforesaid, shall not be competent evidence in any court.

SECTION 9. That in any and all cases where an adhesive stamp shall be used for denoting any tax imposed by this act, except as hereinafter provided, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, so that the same may not again be used. And if any person shall fraudulently make use of an adhesive stamp to denote any tax imposed by this act without so effectually canceling and obliterating such stamp, except as before mentioned, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than fifty nor more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court. . . .

SECTION 13. That any person or persons who shall register, issue, sell, or transfer, or who shall cause to be issued, registered, sold, or transferred, any instrument, document, or paper of any kind or description whatsoever, mentioned in Schedule A of this act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in the manner required by law, with intent to evade the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court; and such instrument, document, or paper, not being stamped according to law, shall be deemed invalid and of no effect. . . .

SECTION 14. That hereafter no instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded or admitted, or used as evidence in any court until a legal stamp or stamps, denoting the amount of tax, shall have been affixed thereto, as prescribed by law: Provided, That any bond, debenture, certificate of stock, or certificate of indebtedness issued in any foreign country shall pay the same tax as is required by law on similar instruments when issued, sold, or transferred in the United States; and the party to whom the same is issued, or by whom it is sold or transferred, shall, before selling or transferring the same, affix thereon the stamp or stamps indicating the tax required.

SECTION 15. That it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law; and the record, registry, or transfer of any such instruments upon which the proper stamp or stamps aforesaid shall not have been affixed and canceled as aforesaid shall not be used in evidence.

SECTION 16. That no instrument, paper, or document required by law to be stamped shall be deemed or held invalid and of no effect for the want of a particular kind or description of stamp designated for and denoting the tax charged on any such instrument, paper, or document, provided a legal documentary stamp or stamps denoting a tax of equal amount shall have been duly affixed and used thereon.

#### STAMP TAXES PARTICULARLY APPLYING TO CORPORATIONS UNDER

#### SCHEDULE A.

**Bonds, debentures, or certificates** of indebtedness issued after the first day of July, Anno Domini eighteen hundred and ninety-eight, by any association, company, or corporation, *on each hundred dollars of face value* or fraction thereof, . . . . . \$0 05

And on each **original issue**, whether on organization or reorganization, of **certificates** of stock by any such association, company, or corporation, *on each hundred dollars of face value* or fraction thereof, ..... 05

And on all **sales**, or **agreements** to sell, or **memoranda** of sales or deliveries or transfers of **shares or certificates** of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock, *on each hundred dollars of face value* or fraction thereof, ..... 02

*Provided*, That in case of sale where the **evidence of transfer** is shown only by the books of the company the **stamp** shall be placed upon such books; and where the change of ownership is by transfer certificate the **stamp** shall be placed upon the certificate; and in cases of an **agreement to sell** or where the transfer is by **delivery** of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a **bill or memorandum of such sale**, to which the **stamp** shall be **affixed**; and every **bill or memorandum** of sale or agreement to sell before mentioned shall show the **date** thereof, the **name of the seller**, the **amount of the sale**, and the matter or thing to which it refers. And any **person** or persons **liable to pay the tax** as herein provided, or any one who acts in the matter as agent or broker for such person or persons, who shall **make any such sale**, or who shall in pursuance of any such sale deliver any such stock, or evidence of the sale of any such stock or bill or memorandum thereof, as herein required, **without having the proper stamps affixed thereto**, with intent to evade the foregoing provisions shall be deemed **guilty of a misdemeanor**, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

Upon each **sale**, **agreement of sale**, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place, either for present or future delivery, *for each one hundred dollars in value* of said sale or agreement of sale or agreement to sell, ..... 01

And for each additional one hundred dollars or fractional part thereof in excess of one hundred dollars, ..... 01

*Provided*, That on **every sale or agreement of sale** or agreement to sell as aforesaid there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there **shall be affixed a lawful stamp or stamps** in value equal to the amount of the tax on such sale. **And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons, liable to pay the tax as herein provided, or any one who acts in the matter as agent or broker for such person or persons, who shall make any such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum or other evidence thereof as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court.**

**Bank check, draft, or certificate of deposit** not drawing interest, or order for the payment of any sum of money, drawn upon or issued by any bank, trust company, or any person or persons, companies, or corporations at sight or on demand, ..... 02

**Bills of lading or receipt** (other than charter party) for any goods, merchandise, or effects, to be exported from a port or place in the United States to any foreign port or place, ..... 10

**Bond:** For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as **surety** for the payment of any sum of money, or **for the due execution or performance of the duties of any office** or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings not otherwise provided for in this schedule.... 50

**Certificate of profits**, or any certificate or memorandum showing an interest in the property or accumulations of any association, company, or corporation, *and on all transfers thereof, on each one hundred dollars of face value or fraction thereof, .....* 02

**Certificate** of any description required by law **not otherwise specified** in this act, ..... 10

|   |      |
|---|------|
| <b>Conveyance: Deed, instrument, or writing</b> , whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value <i>exceeds one hundred dollars and does not exceed five hundred dollars</i> , .....  | 50   |
| And for <i>each additional five hundred dollars</i> or fractional part thereof in excess of five hundred dollars, .....   | 50   |
| <b>Lease, agreement, memorandum, or contract</b> for the hire, use, or rent of any land, tenement, or portion thereof—  |      |
| If for a period of time <i>not exceeding one year</i> , .....   | 25   |
| If for a period of time <i>exceeding one year</i> and not exceeding three years, .....  | 50   |
| If for a period <i>exceeding three years</i> , .....  | 1 00 |
| <b>Mortgage or pledge</b> , of lands, estate or property, real or personal, heritable, or movable, whatsoever, where the same shall be made as a security, <b>for the payment of any definite and certain sum of money</b> , lent at the time or previously due and owing or forborne to be paid, being payable; also any <b>conveyance of any lands, estate, or property</b> , whatsoever, <b>in trust</b> to be sold or otherwise converted into money, which shall be intended only as security, either by express stipulation or otherwise; on any of the foregoing <i>exceeding one thousand dollars and not exceeding one thousand five hundred dollars</i> , ..... | 25   |
| And on each <i>five hundred dollars</i> or fractional part thereof in excess of fifteen hundred dollars, .....  | 25   |
| <i>Provided</i> , That upon each and every <b>assignment or transfer of a mortgage, lease, or policy of insurance</b> , or the renewal or continuance of any agreement, contract, or charter, by letter or otherwise, <i>a stamp duty</i> shall be required and paid at the <b>same rate as</b> that imposed on the <b>original instrument</b> .  |      |
| <b>Power of attorney</b> or proxy for <b>voting at any election for officers</b> of any incorporated company or associations, except religious, charitable, or literary societies, or public cemeteries,...   | 10   |
| <b>Power of attorney</b> to <b>sell and convey real estate</b> , or to rent or lease the same, to receive or collect rent, to sell or transfer any stock, bonds, scrip, or for the collection of any dividends or interest thereon, <b>or to perform any and all other acts</b> not hereinbefore specified, .....   | 25   |

THE COMMISSIONER OF INTERNAL REVENUE HAS MADE THE FOLLOWING  
RULINGS.

The nominal face value of the certificate as a whole is the basis upon which the tax is computed without regard to the par value of each share or the amount that has been paid into the treasury of the company on such share.

A power of attorney on the back of a certificate of stock requires a twenty-five cent stamp as a power of attorney in addition to the tax on the transfer at the rate of two cents per one hundred dollars.

Where a stockholder merely surrenders his certificate and takes a number of certificates therefor in his own name, there is no transfer and no stamp is required.

Where stock is pledged as collateral for a loan, the tax is to be recovered on the amount of money loaned above \$1,000, and not on the face value of the certificate or securities.

The stamp should be affixed to the note accompanying the pledge, and the note should also be stamped as a note.

The acknowledgment to a certificate of incorporation requires a ten-cent stamp.

Power of attorney authorizing proxy to do other business than vote for elections of officers, requires a twenty-five cent stamp the same as a general power of attorney.

When several stockholders join in executing one proxy one stamp is sufficient.

(NOTE.—In placing stamps on stock certificates all *original* certificates should have the stamp placed upon the face thereof. In other cases the stamp should be placed on the back of the old certificate or the memorandum of sale or on the transfer book, where required.)



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Railroads, railways, canals, banking corporations, savings banks, cemeteries, religious, charitable or educational companies, and manufacturing or mining companies, fifty per centum of whose capital stock issued and outstanding is invested in manufacturing and mining in this state. Manufacturing and mining companies not having said fifty per cent. so invested but having a part of capital stock so invested are entitled to deduction of value of real and personal property used in manufacturing and mining in the state, from amount of capital stock issued and outstanding.

Section 2 of the franchise tax law provides that certain corporations (above named) shall make report of their total receipts of business done in this state and section 4 requires such companies to pay to the state treasurer the amount of franchise tax fixed upon such report.

Any such company operated wholly outside of this state, is therefore not required to make report and would not be subject to a franchise tax.

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